

compensation than smaller employers, giving the selective coverage approach the added benefit of extending a presumption of coverage to only those employees whose employers can most readily afford to pay workers' compensation to begin with. This would decrease the risk that workers' compensation becomes yet another unmanageable cost for smaller employers during the next global pandemic.

B. Remediating market uncertainty

[This subsection, which suggests that states should be clear about the outer bounds of their workers' compensation coverage to avoid uncertainty no matter what scheme they ultimately adopt, has been omitted for brevity.]

V. CONCLUSION

This Comment aims to make two contributions to the field of workers' compensation law: First, it creates four novel categories of state workers' compensation policy in the wake of the COVID-19 pandemic and places these policies along a spectrum, from most likely to cover a meaningful number of workers to least likely. Second, this Comment argues that, in light of the historical background of workers' compensation law and principles of economically efficient burden allocation, states should adopt a selective coverage approach in preparing for the next pandemic. This approach would protect workers most at risk by extending a presumption of coverage to those employed in enumerated essential positions while minimizing the financial impact of workers' compensation for many smaller businesses with a lower ability to pay.

Applicant Details

First Name **Isaac**
 Last Name **Morales**
 Citizenship Status **U. S. Citizen**
 Email Address iamc@ive.com
 Address

Address
Street
9014 Brow Lake Rd
City
Soddy Daisy
State/Territory
Tennessee
Zip
37379
Country
United States

Contact Phone Number **5756404544**

Applicant Education

BA/BS From **New Mexico State University**
 Date of BA/BS **May 2015**
 JD/LLB From **American University, Washington College of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010
 Date of JD/LLB **May 20, 2018**
 Class Rank **33%**
 Law Review/Journal **Yes**
 Journal(s) **American University Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Moot Court Honor Society**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Giblin, Keith
sherre_white@txed.uscourts.gov
Lenerz, Daniel
danlenerz@yahoo.com
202-655-9288

References

1. Jennifer Caballero
Staff Attorney
Court of Appeals for the Ninth Circuit
Email: jencaballero@gmail.com
Phone: (650) 279-9785
Jennifer was the supervisor for the Immigration Unit during my time at the Ninth Circuit. She conducted final review of my cases before panels.
2. The Honorable Keith F. Giblin
United States Magistrate Judge
Eastern District of Texas
Email: keithfgiblin@gmail.com
Phone number: (409) 656-5500
I was Judge Giblin's law clerk from September 2018 to September 2020.
3. Daniel Lenerz
Legal Rhetoric Professor
Washington College of Law
Email: danlenerz@yahoo.com
Phone number: Not Available

Professor Lenerz was the teacher to whom I was assigned as a Legal Rhetoric teaching assistant for the 2017-2018 academic year.

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Isaac Morales: Cover Letter

9014 Brow Lake Rd. • Soddy-Daisy, TN • (575) 640-4544 • isaac.morales@alumni.american.edu

April 13, 2022

Good afternoon, Judge Hanes –

My name is Isaac Morales. I am interested in the 2022-2023 law clerk position in your chambers. I was most recently a Staff Attorney at the Ninth Circuit Court of Appeals for a year and a half and a law clerk for U.S. Magistrate Judge Giblin for two years prior to that. From those positions, I gained the substantive experience and practical knowledge necessary to be an asset to your chambers. I chose to apply for this clerkship because I am interested in returning to the DMV area and ultimately working at the Department of Justice and your chambers would be a significant step towards that goal.

In my time as a Staff Attorney, I gained experience that I could apply to your chambers. I worked in the Immigration Unit, and I wrote dozens of analysis packets and memorandum dispositions that I presented to three-judge panels. And, as a law clerk for Judge Giblin, I wrote dispositive orders on substantive issues ranging from straightforward tort claims to much more complicated patent issues. I also wrote numerous procedural orders handling every aspect of a case from its filing to its disposition. Thus, I have the experience to handle the substantive and procedural matters that are submitted to your chambers and understand how they are reviewed on appeal, and I know how to operate in a magistrate judge's chambers.

Additionally, in law school I was on the Law Review, a competing member and spring recruitment director for the Moot Court team, and a legal writing teaching assistant. From those positions, I was exposed to hundreds of pieces of writing, both good and bad, and that helped me improve my own ability to write clearly and directly. Moreover, I held those positions concurrently in law school, so I learned how to organize varied projects and manage my time effectively as well.

From those experiences, I would be able to take on any assignment in your chambers and handle it effectively and efficiently. Also, I am an enthusiastic and hardworking person, so I would be able to integrate into your chambers' staff easily. And, my personal connection to the area would make working for you even more rewarding. I look forward to hearing from you about the opportunity to contribute your chambers as a law clerk.

Sincerely,

Isaac Morales

Isaac Morales: Resume

9014 Brow Lake Rd. • Soddy-Daisy, TN • (575) 640-4544 • isaac.morales@alumni.american.edu

Education:

American University Washington College of Law

Washington, DC

J.D. Candidate; GPA: 3.52

May 2018

Law Review: *American University Law Review* (Grade-On Member)

Moot Court: *Moot Court Honor Society* (Qualifying Tournament Co-Director and Competitor)

Activities: *Human Rights Brief* (Editor of Inter-American Commission on Human Rights coverage)

New Mexico State University

Las Cruces, NM

B.A. in Government and Philosophy (double-major)

Minor in Law & Society; GPA: 3.51

May 2015

Honors: Dean's Honors List; Student Government Leadership Scholarship

Activities: NMSU Model United Nations Team (Ranked top 15% nationally 2013-2015)

Experience:

Court of Appeals for the Ninth Circuit

Office of Staff Attorneys: Immigration Unit

San Francisco, CA

Staff Attorney

October 2020 – February 2022

Wrote work-up packets and memorandum dispositions analyzing petitions for review from agency decisions denying relief from removal or various motions. Presented cases every month to three-judge panels. Handled any post-panel motions for panel rehearing or rehearing en banc, which were also presented to three-judge panels. Responded to ICE Inquiries on a noncitizen had a stay of removal in place.

U.S District Court for the Eastern District of Texas

The Honorable Keith Giblin, Magistrate Judge

Beaumont, TX

Term Law Clerk

September 2018 – September 2020

Handled dispositive pre-trial matters on cases referred from district judge by writing Reports & Recommendations and communicated with district judge chambers to incorporate edits. Independently handled dispositive matters on referred cases and all matters on cases consented to Judge Giblin.

District of Columbia Court of Appeals

The Honorable Anna Blackburne-Rigsby, Chief Judge

Washington, DC

Judicial Intern

January 2018 – May 2018

Drafted an order of ineffective assistance of counsel in an inter-gang gun battle. Attended Chief Judge's pre-argument moots where Special Counsel and clerks presented bench memoranda and discussed the pending case. Additionally, will draft orders on other criminal cases and civil cases, including administrative law, class actions, and property disputes.

American University Washington College of Law

Washington, DC

Dean's Fellow, Legal Research & Writing

August 2016 – May 2018

Conducted classroom presentations on legal writing and citation, including appellate brief-writing and oral advocacy. Edited spring semester appellate brief and mooted oral arguments, in addition to editing office memoranda, motions to dismiss, and trial court briefs.

Dean's Fellow, Professor Susan Carle: Constitutional Law May 2016 – March 2017
Conducted substantive research and drafted memoranda on 42 U.S.C § 1983 in civil rights litigation, constitutional law standing, professional ethics rules, constitutional amendment legislative history, and constitutional law doctrine.

United States Department of Justice, Civil Division Washington, DC
Volunteer Legal Intern, Office of Immigration Litigation: Appellate Section May 2017 – August 2017
Drafted motions for summary dismissal, and appellate brief for appeals in the Second, Ninth, and Eleventh Circuits. Wrote office-wide memoranda summarizing decisions from the federal courts of appeal adverse to the United States.

Volunteer Legal Intern, Torts Branch: Admiralty & Aviation Section March 2017 – May 2017
Conducted research and wrote memoranda on the Discretionary Function Exception to the Federal Tort Claims Act's general waiver of sovereign immunity. Drafted motions to dismiss and motions for summary judgement.

United States Court of Appeals for Veterans Claims
The Honorable Lawrence B. Hagel, Chief Judge Washington, DC
Judicial Intern May 2016 – August 2016
Drafted decisions and orders in response to petitions, motions, and attorney's fees applications. Conducted substantive research on class action rules, agency deference, and regulatory interpretation.

Skills & Interests:

Spanish (fluent – written and oral). Stand-up comedy, science-fiction and fantasy literature and film, European soccer (Manchester United), Van Gogh, Mozart, playing violin, downhill skateboarding, and anime.

Isaac Morales
American University, Washington College of Law
Cumulative GPA: 3.54

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Rhetoric: Research & Writing I	Elizabeth Beske	A-	2	
Torts	Fernanda Nicola	B+	4	
Contracts	James May	A-	4	
Civil Procedure	N. Jeremi Duru	A-	4	

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Comparative Law	Fernanda Nicola	A	2	
Criminal Law	Ira Robbins	B+	3	
Legal Rhetoric: Research & Writing II	Elizabeth Beske	B+	2	
Property	Heather Hughes	A-	4	
Constitutional Law	Susan Carle	A	4	

Summer 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence	Kenneth Troccoli	B+	4	
Legal Ethics	John Szabo	A-	2	

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law	Mark Niles	A-	3	
Criminal Procedure	Robert Tsai	B	3	
Appellate Advocacy	Thomas Bondy	A-	3	
Business Associations	Walter Effross	B	4	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Civil Procedure: Complex Litigation	Bernie Corr	A	3	
Federal Courts	Elizabeth Beske	B+	4	
Litigation with the Federal Government	Hon. Mary Ellen Coster Williams	B+	3	

Summer 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Supervised Externship Seminar	Avis Sanders	A-	3	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Organizations & Multi-National Institutions	Diane Orentlicher	B+	2	
Immigration & Naturalization	David McConnell	A-	3	
Supreme Court Seminar	Stephen Wermiel	A-	2	
Asylum & Refugee Law	Ubaid ul-Haq	A	3	
International Law	Diane Orentlicher	B+	3	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Lawyer Bargaining	Ben Jacewicz	B	3	
Remedies	Mark Emery	B+	3	

Grading System Description

A or 4.0;
A- or 3.7;
B+ or 3.3;
B or 3.0;
B- or 2.7;
C+ or 2.3;
C or 2.0;
D or 1.0;
and F or 0.

April 14, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my distinct pleasure and honor to submit this letter of reference recommending Isaac Morales for employment as a law clerk in your chambers. Isaac worked for me as a term law clerk from August 2018 to August 2020 and did an outstanding job. Needless to say, Isaac was highly qualified for the position. My decision to hire him, however, was also based on his nature as a self-starter, ability to think on his feet, and capability to adapt to any situation which could arise in managing his cases. These attributes became clear immediately upon meeting him in person during the interview process. From the first day on the job, I saw that Isaac was motivated and requires minimal instruction and supervision. He learned quickly and immediately began handling complex cases during the first week in chambers.

Isaac is adept at quickly identifying pertinent issues and addressing them succinctly. He also possesses the ability to easily recall details and give status updates related to his case load. This quality is key when managing the busy docket of a magistrate judge with hundreds of cases both referred from District Courts and consented for trial. It is also something that I rarely see in someone his age and with relatively little practice experience. He is an accomplished legal writer but also responds well to constructive criticism and suggested revisions. He is punctual and has an outstanding work ethic. Isaac is extremely focused and will work on a proposed order for as long as it takes to get the job done correctly.

Isaac is kind, considerate, and courteous. He keeps to himself, working intently and quietly. At the same time, he is confident and assertive enough to reach out with any questions or concerns about his cases before proceeding. His easygoing nature has made him a perfect fit for our chambers. He gets along with staff, judges, and the other law clerks in our division. Although I hate to see him go, I strongly recommend him as a candidate in order to further his legal experience and education. I know that a clerkship from the perspective of your office will solidify his future as a proficient and highly skilled attorney.

In my opinion, he has the intelligence, drive, character, attitude, and work ethic become an excellent addition for your office. I am be proud and humbled to have been asked to write this letter on his behalf. I want to thank you very much for your consideration. Please feel free to contact me if you have any questions about Isaac.

Sincerely yours,

Keith F. Giblin
United States Magistrate Judge

Keith Giblin - sherre_white@txed.uscourts.gov

April 14, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing in support of Isaac Morales's application for a clerkship in your chambers. Isaac worked as my teaching assistant for the 2017-2018 academic year, and I can say without a doubt that he is the nicest, most earnest person from whom you will receive an application. Isaac's interest in and dedication to legal research and writing is both strong and genuine, and I think he would make an ideal law clerk.

Over this time as my teaching assistant, Isaac was been a great resource for both me and my students. He did whatever I asked of him quickly and well, and regularly volunteered solutions to problems that I did not yet realize existed. For example, unlike my past teaching assistants, and without my prompting, Isaac sent me emails describing problems my students had and thoughts on how I might approach the material in the next class so as to address those problems. In addition to being incredibly informative and helpful, Isaac's emails always reflected significant thought about how to best address the students' issues. Indeed, I can think of multiple occasions where the light went on for particular students only after I approached the problem in the manner Isaac had suggested.

Isaac's helpfulness is borne of a genuine friendliness and earnestness the likes of which I have rarely come across. Although he was engaged in many other time consuming activities—including law review, moot court, and interning for a local court of appeals judge—Isaac regularly asked what he can do to be more helpful or to assist me better. I think he was honestly disappointed that I did not ask him to do more. Isaac is one of those rare people who is just a really great person, and it comes through in everything he does.

Isaac is also truly interested in solving legal issues and in becoming the best legal writer he can. Isaac was been a teaching assistant in American's first-year legal writing program for two years, and I can tell you from experience that teaching first-year law students how to become better legal writers absolutely causes one's own writing to improve. Isaac has also competed on American's moot court team, and interned for two different judges. Not only has all of this experience allowed him to become an adept legal problem solver and talented legal writer, but it reflects his commitment to becoming a better attorney.

Isaac's dedication to public service is also readily apparent. As a three-time clerk and career government attorney, I admire and appreciate people, like Isaac, who see the value in government service. Isaac has already worked for two judges and interned for the Department of Justice's Torts Branch and Office of Immigration Litigation. When Isaac spoke of those experiences, it is clear that he believes in the government's mission to help the public, and has learned important lessons about being an attorney, including the need to be clear, candid, and direct in one's writing.

Please feel free to call or email me if there is anything else I can tell you about Isaac. I have no hesitation recommending that you hire Isaac to be a law clerk. Isaac is a hard worker, a committed attorney, and, most importantly, an incredibly nice and friendly person who would make a fantastic clerk.

Sincerely,

Dan Lenerz

Daniel Lenerz - danlenerz@yahoo.com - 202-655-9288

Isaac Morales: Writing Sample

9014 Brow Lake Rd. • Soddy-Daisy, TN • (575) 640-4544 • isaac.morales@alumni.american.edu

The first writing sample is the write-up packet for one of the final cases I did during my time as a Staff Attorney at the Ninth Circuit. The packet has a Visual Aid that is distributed to the panel, then the text of what I presented to the judges during the monthly panel. There is a section of the presentation that is in brackets because it is an alternative ground on which to decide the case and to have the information available if the panel asked. “Issue #2,” which begins on page 13, is the corresponding analysis to that alternative ground. The remainder of the packet contains the summaries of the agency decisions, the briefs before the court, and the most relevant facts for the analyses.

The second writing sample is the memorandum disposition that I submitted to the panel for the case. The memorandum disposition itself is a page and a half, so there is little to analyze, but it demonstrates the significant work involved in distilling the case from the arguments in the briefs, to the packet, then to the presentation, and finally to how the disposition resolves the case.

19- [REDACTED] X [REDACTED] v. Garland
CASE REVIEW CHECKLIST – Immigration

Prepared By: Isaac Morales	Date Submitted: 1/19/2022
--	----------------------------------

Materials submitted to reviewer:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Completed Jurisdictional Checklist
<input checked="" type="checkbox"/> Proposed Memdispo
<input checked="" type="checkbox"/> Notes
<input checked="" type="checkbox"/> Presentation Blurb | <input checked="" type="checkbox"/> Visual Aid
<input checked="" type="checkbox"/> Briefs, Pending Motions
<input checked="" type="checkbox"/> Administrative Record
<input type="checkbox"/> Other: |
|--|---|

Reviewed by: S [REDACTED]	Date [of Review Meeting]: Click or tap to enter a date.
----------------------------------	--

TO BE COMPLETED BY REVIEWER PRIOR TO REVIEW MEETING:

Jurisdictional Review

- ☒ Check Jurisdiction and Fee Status / Review Jurisdictional Checklist

If follow up needed, explain:

Docket Review

- ☒ Check 9th Circuit docket for pending motions and requests for oral argument

If follow up needed, explain:

Substantive Review

- ☒ Read briefs
☒ Read order(s) appealed from
☒ Read relevant portions of the record
☒ Read notes

If follow up needed, explain:

Memdispo – Content Review

- ☒ Check content of memdispo
 - ☒ Confirm that dispo addresses all issues on appeal
 - ☒ Confirm that dispo resolves all pending motions/requests
 - ☒ Confirm that dispo includes stay of removal language (if needed)
 - ☒ Proofread for spelling, grammar, punctuation, etc.

19-█████ X█████ v. *Garland*
Counseled / Not detained

Recommendation: Dismiss	
Country: China Age: 59	Ground for Removal: Remained longer than permitted
Background: <ul style="list-style-type: none"> October 1, 2013: BIA dismissed X█████ original appeal (petition for review later dismissed and denied by this court on December 3, 2018). January 22, 2014: X█████ married U.S. citizen spouse. October 20, 2014: X█████ U.S. citizen spouse filed an I-130 visa petition. July 10, 2014: I-130 visa petition was approved. September 28, 2017: X█████ filed with the BIA a motion to reopen under the BIA's sua sponte authority in order to apply for adjustment of status. 	
Basis for Recommendation: Motion to Reopen No jurisdiction to review decision not to sua sponte reopen where no legal or constitutional error by agency. Any contention that X█████ motion to reopen qualifies for an exception to the 90-day filing requirement is unexhausted.	
Criminal Convictions: None	Family in U.S.: Husband (USC)

19-█████ X█████ v. *Garland*

I. PRESENTATION

Recommend: ☒ *Dismiss* ☐ *Grant* ☐ *Deny in part; Grant in part*

Presentation

- NOTE: The use of “petitioner” is for ease of reference through the editing process.
- This is a motion to reopen from China. I recommend the panel dismiss.
- As background, in 2013, the BIA dismissed petitioner’s original appeal, which this court ultimately dismissed and denied. In 2014, petitioner married a United States citizen, and in 2017, petitioner filed an untimely motion to reopen seeking to apply for adjustment of status.
- In the motion, petitioner acknowledged that she was married outside the 90-day deadline for filing a motion to reopen, and therefore only sought reopening under the Board’s sua sponte authority.
- The Board declined to do so, and I recommend the court lacks jurisdiction to review that decision.
 - In her opening brief, petitioner now argues that the Board erred by considering her motion solely under its sua sponte authority. However, petitioner did not offer any other legal basis for reopening where she conceded her motion was untimely filed, so I recommend this is not a colorable legal error.
 - Further, the equitable estoppel arguments she raises now were not in her motion to reopen, so they are unexhausted and do not raise a colorable legal claim.
 - Last, to the extent ptr raises another new argument of an exception to the filing deadline, that contention is also unexhausted and not a colorable claim.
 - [In any event, petitioner did not demonstrate affirmative misconduct or that she suffered a serious injustice or that public interest favors estoppel.
 - As to government misconduct, petitioner claims she had an agreement with the government and DHS former counsels to join a motion to reopen once her visa application was approved, that she waited to file her motion to reopen because of that, and that the government’s new counsel committed affirmative misconduct by declining to join. However, as petitioner acknowledged, she would always have been in the position of filing an untimely motion regardless of any government action because she was married outside the 90-day deadline [and petitioner does not claim any government misconduct caused the delay in filing the I-130 visa petition in the first place, and that delay was a key part of the BIA’s analysis in determining no exceptional situation had been presented].
 - NOTE: If the panel seems resistant to the idea that the government didn’t do anything wrong, then that is where the explanation of the cases that are detailed on page 14 can be used.
 - As to serious injustice, petitioner could never have filed a timely motion, so there is not harm, let alone serious injustice that resulted from government misconduct. And, the public interest in executing removal orders promptly favors dismissal as well.]

19-█████ X █████ v. Garland

- Accordingly, I recommend dismissing the petition for review.

II. BACKGROUND

<i>Detained:</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Pro Se</i> <input type="checkbox"/> <i>Cnsl</i> <input checked="" type="checkbox"/>	<i>Prior PFRs:</i> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> • 13-73728: DE 9 (terminated for lack of prosecution & DE 11 reinstating case) • 13-73728: DE 44 (denied in part and dismissed in part)
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<i>Pending Motions/Request for Oral Argument:</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

<i>Cntry:</i> China AR 45	<i>Age:</i> 59 DOB: 8/11/1962 AR 45	<i>Entry date:</i> 6/12/2001 AR 348	<i>Removal Basis:</i> INA Section 237(a)(1)(B) remained longer than permitted. AR 431
<i>Applications for relief</i>	<i>Asy</i> <input type="checkbox"/> <i>WOR</i> <input type="checkbox"/> <i>CAT</i> <input type="checkbox"/> <i>MTR</i> <input checked="" type="checkbox"/> <i>COR</i> <input type="checkbox"/> <i>AOS</i> <input type="checkbox"/> <i>Other</i> <input type="checkbox"/> _____		

<i>Convictions:</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> • AR 355 	<i>Family:</i> Husband (USC). AR 46. Son (Chinese citizen, not in U.S.). AR 349
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19-██████ X ██████ v. *Garland***III. MERITS**

Scope of Review:	IJ <input type="checkbox"/>	BIA <input checked="" type="checkbox"/>	Both <input type="checkbox"/>
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Agency Decisions

IJ	9/23/2011	w/ counsel <input checked="" type="checkbox"/>	A ██████	pro se <input type="checkbox"/>
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• Background:

- Petitioner claims she has been the victim of China's coercive population control policy. AR 120. After having a child, she was required to have an IUD inserted. AR 121. In June 1999, she discovered she was pregnant and would be required to have an abortion. AR 121. She eventually was required to have one. AR 121. The next day she was fired. AR 121. In August 1999, her husband left her. Petitioner was able to come to the United States through employment she obtained with the assistance of a friend of her father. AR 121-22. In November 2000, petitioner returned to China but came back in January 2001. AR 122. She returned at some point but came back to the United States on June 12, 2001. AR 122. She overstayed her visa and ultimately filed her application for asylum on March 19, 2003. AR 122.

• Testimony Re: Timeliness of the Application:

- She heard from her father that he had been summoned to court for questioning, and then interrogated, beaten, and fined because of his practice of Christianity, which prompted her to apply for asylum in 2003 and thus demonstrated changed circumstances to justify the untimely filing. AR 122.

• One Year Filing Deadline:

- Petitioner entered the United States for the last time on June 12, 2001, with authorization to stay until December 11, 2001. Her application was filed March 19, 2003. AR 123.
- Inconsistent Testimony
 - Petitioner testified that the news of her father's detention prompted her to file her application for asylum, but that is not consistent with her divorce documents. AR 123.
 - Petitioner her husband filed for divorce some time after their separation in China, but due to a custody dispute, the divorce was never finalized. AR 124. She was prompted to file for divorce in the United States when she learned of the harassment. AR 124.
 - The divorce papers were filed on March 14, 2002, and the application was not filed until March 2003. AR 124.
 - Initially testified that she received a letter from her parents in February 2002 regarding the detention of her father, but she later corrected that statement to say it occurred in February 2003. AR 124.
 - She also received calls involving the same information. AR 124-25.
 - On cross-examination, when asked to clarify whether her father was arrested in 2002 or 2003, she stated it happened in 2003. AR 125.
 - She later testified she found out by a phone call in 2002 that her father had those

19-█████ X█████ v. Garland

problem but appeared to be confused and stated that perhaps had taken place in 2003. AR 125

- Petitioner's testimony is thoroughly inconsistent as to whether she received news of her father's arrest in 2002 or 2003. Thus, she has failed to demonstrate her burden of demonstrating adequate changed circumstances to justify the untimely filing.

- **Credibility**

- First, inconsistent regarding her father's alleged arrest. AR 126-27. The testimony was not only self-contradictory but also inconsistent with the filing dates of the application for asylum versus her divorce documents. AR 127. The IJ noted that she is motivated to show that she learned of her father's arrest in 2003 to explain why she filed her asylum application at that time, but the testimony is contradicted by the fact she filed her divorce papers in 2002. AR 127.
- Second, inconsistent as to the details of the arrest. AR 127. Testified that her mother and father told her on a call that he had not been physically abused but had been detained. AR 128. Then said he had not told her on the phone he had been arrested. AR 128. In her declaration, however, she had said he was summoned to court for questioning and interrogated, beaten, detained, and fined. When asked to explain the inconsistency, she said her father told her that when he was detained that the officials told him they had an idea about hitting him but had not done anything too serious. Petitioner was then pressed about whether her father had actually been beaten and she said he had not been and the police had just been rude to him. AR 128. The testimony was an attempt to conform what she said to the inconsistencies that had been pointed out. AR 128-29.
- Third, inconsistency regarding date of divorce. She testified that they married in 1986 and separated in August 1999 but confronted with her statement in her divorce papers that she separated in 1995. AR 129.

- Asylum denied due to inability to meet burden of proof because of lack of credibility. AR 131.

- Withholding of removal denied for failure to meet the lower burden for asylum. AR 131.

- **CAT:**

- Failed to present credible testimony or evidence sufficient to meet her burden of demonstrating it is more likely than not she will be tortured if returned. AR 131
- Additionally, upon review of all the evidence in the record, independent of her testimony, she failed to present sufficient facts to meet her burden of proof. AR 131-32.

- Voluntary departure: granted. AR 132

BIA 10/1/2013 w/ counsel ☒ K█████ pro se ☐

- CAT: the petitioner did not meaningfully challenge CAT. AR 92 n.1.

- IJ found that asylum application was untimely filed and no changed circumstances existed. AR 92.

- Adverse credibility determination: Did not find adverse credibility determination to be clearly erroneous. AR 93.

- Petitioner's testimony regarding the year her father was arrested, what happened to him, and the dates of her divorce were sufficient to find him not credible and the inconsistencies go to the

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<p>heart of the claim. AR 93.</p> <ul style="list-style-type: none"> ○ Adverse credibility determination was based on specific, cogent reasons and it was not clearly erroneous. AR 94. ○ As such, petitioner did not credibly establish changed circumstances or that she filed for asylum within a reasonable time given those circumstances, so she is not eligible for asylum. AR 93. ○ Withholding of removal: not clearly erroneous due to the adverse credibility determination. AR 93. <ul style="list-style-type: none"> • Past persecution: no past persecution. AR 94. • Due process: Has not adequately demonstrated that the outcome would have been affected by the delay in DHS's referral of her application to the immigration court. AR 94. The immigration court practice manual does not state that an interpreter may not translate telephonically. AR 94. Petitioner was represented by an attorney and did not object to having the interpreter translate telephonically or claim she was unable to understand the translation. AR 94. • Voluntary departure: reinstated. AR 94.
<p>BIA2 6/12/2019 w/ counsel <input type="checkbox"/> (name) pro se <input checked="" type="checkbox"/></p> <ul style="list-style-type: none"> • [Reissued] • NOTE: petitioner's counsel did not file the form to appear before the Board, so the Board deemed petitioner appeared pro se. AR 4 n.1. • Petitioner argues that the Board should reopen proceedings sua sponte because her marriage, and the filing of a visa petition on her behalf, were delayed due to her husband's work schedule. AR 4. • Sua Sponte Denial <ul style="list-style-type: none"> ○ Removal proceedings were initiated in 2010, the IJ denied relief in 2011, the Board affirmed the decision on October 1, 2013. AR 4. Petitioner did not get married until January 14, 2014, after the time to file a motion to reopen had expired. AR 4. A visa petition was not filed on her behalf until October 20, 2014, more than a year after the Board issued its decision and nine months after she was married. AR 4. The Board agreed with the government's opposition brief that the delay in her marriage and filing of the visa petition does not constitute an exceptional situation. AR 4. The delay in approving the visa petition by USCIS also does not constitute an exceptional situation, and thus there is an insufficient basis to support sua sponte reopening. AR 4-5.

IV. CONTENTIONS

<p><i>Arguments to BIA – Motion to Reopen</i></p> <ul style="list-style-type: none"> • Background: petitioner married a U.S. citizen on January 22, 2014, and the I-130 was filed on or about September 26, 2014. She is otherwise eligible for adjustment of status because she entered with inspection and has no disqualifying convictions. AR 32. The denial of the direct appeal was on October 1, 2013, but the marriage took place outside the 90-day period to file a motion to reopen. AR 32. The delay was because

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petitioner's husband is film production advanced scout and spent most of his time on location and not in California for several months. AR 32-33. Due to some errors by USCIS, it took almost two years for the application to be approved. AR 33. The case was in mediation while the I-130 was waiting to be approved but ultimately went back to litigation. AR 33. Petitioner corresponded with an attorney at OIL who stated she would not oppose putting the case in abeyance, to allow joint reopening with OIL. AR 33. Deputy chief counsel at ICE indicated he would defer to OIL but would not take a position until the I-130 was actually approved. AR 33.

• Motion to Reopen Sua Sponte

- Petitioner asked the Board to sua sponte reopen the case. AR 35. She acknowledged that she would not have met the 90-day deadline even if she had filed the I-130 motion the day she got married.
- The 9-month difference from the marriage and the filing was because her husband was on location most of the relevant period, and he did not actually sign the petition until I-130 October 14, 2014. AR 35-36.
- The petition was filed that day and received by the Board two days later. AR 36.
- The delay in adjudication was unusual, and because of the delay, petitioner asks the Board to sua sponte reopen. AR 36

Arguments to Court

• BIA erred by not addressing petitioner's argument that she had entered into mediation with an agreement to remand

- Government waived the right to oppose the motion to reopen
 - The Ninth Circuit addressed waiver in the context of ERISA. *Salyers v. Metro Life Ins Co*, 871 F.3d 934 (9th Cir. 2017). There, Salyers had intended to buy a \$50k coverage policy but was inadvertently billed for a coverage of \$500k, and when her relative died, the insurance company tried to stand on their intended agreement. ERISA requires an element of detrimental reliance or some misconduct on the part of the insurance plan before finding that it has affirmatively waived a limitation defense. *Id.* AR 941, n.5. OB 14-15.
 - In early 2014, the government contacted petitioner about an extension of time to file the answering brief. At that time, petitioner's counsel informed her that petitioner had just married a U.S. citizen and was interested in remanding the case to the Board to pursue adjustment of status. OB 16. The parties agreed petitioner qualified for that relief and that the government would not oppose a motion to remand for that relief. OB 16.
 - In a motion by petitioner to hold the case in abeyance, she stated that the plan was to file a joint motion to remand the case to the Board to allow petitioner to seek adjustment of status. OB 17
 - Petitioner claims that the government's counsel then indicated an opposition to the motion to remand and would only join if the chief counsel at San Francisco DHS did not oppose. Chief counsel said he would defer a decision until the I-130 was approved. OB 17

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<ul style="list-style-type: none"> • By the time the I-130 was approved, neither government counsel nor chief counsel were at their positions anymore, and the current chief counsel opposed the motion on timeliness. OB 17 • For that reason, the court should find that the government’s actions constituted a waiver of its arguments to timeliness, even without proof that petitioner relied on that argument. OB 17 • In this case, there was an agreement in principle by the parties to hold the direct appeal in abeyance pending the receipt of the I-130, and it was the understanding of the parties that once the petition was approved, there would be no opposition. And, in a conversation with the former DHS chief counsel, petitioner’s counsel states that the former chief counsel indicated he would not oppose remand if OIL did not oppose. Thus, the government waived its right to oppose remand. OB 19. ○ Petitioner detrimentally relief on government’s agreement to join the motion <ul style="list-style-type: none"> ▪ The government’s agreement to hold the case until the I-130 was <i>approved</i>, not received, is critical to the Board’s computation of what is a reasonable time to factor into the sua sponte decision. (NOTE: petitioner emphasizes “approved” in the OB). OB 20. ▪ All the factors for equitable estoppel are present: the parties entered into an agreement for a joint motion to remand, entered into a stipulation to hold the case in abeyance until the I-130 was approved, petitioner relied on that agreement and did not promptly move to remand, but waited almost two years to bring the motion. That wait was necessitated by petitioner’s insistence that an <i>approved</i> I-130 was necessary before she joined the motion to reopen. Thus, the court should estop the government from reneging on its promise to join the motion to reopen. OB 20. • Board erred in construing motion solely as a request to exercise its sua sponte authority <ul style="list-style-type: none"> ○ The entirety of the Board decision is analyzed under its sua sponte authority. OB 22 <ul style="list-style-type: none"> ▪ No mention is made of the argument, or the evidence between the parties, that was used to demonstrate the existence of an agreement. OB 22-23 ▪ No analysis of detrimental reliance or equitable estoppel was addressed. OB 23 ▪ No analysis was done regarding the merits and equities of the case. OB 23 	<p><u>Government’s Argument</u></p> <ul style="list-style-type: none"> • Summary of the Argument <ul style="list-style-type: none"> ○ No jurisdiction to consider the purely discretionary decision not to sua sponte reopen. AB 11 <ul style="list-style-type: none"> ▪ Petitioner never requested equitable estoppel, or made any other argument about the statutory time limit on reopening in her motion to reopen. AB 11 ○ Petitioner did not demonstrate affirmative misconduct by a government official. AB 11 <ul style="list-style-type: none"> ▪ She also did not show that any misconduct resulted in a serious injustice to her or that public interest favors estoppel against the government. AB 11-12. • No jurisdiction to review sua sponte denial
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- The Board found no exceptional circumstances to warrant reopening. AB 14
- Petitioner raises no claim of legal or constitutional error
 - Summary of Petitioner's Arguments
 - Petitioner argues the Board erred by considering her motion only in the sua sponte context and failed to consider equitable estoppel
 - She argues that the government's attorney promised to join in a motion to remand once her visa petition as approved and that the DHS chief counsel similarly promised. AB 15
 - Thus, petitioner argues the government should be held to the promises she alleges the counsel and DHS chief counsel made. AB 15
 - Exhaustion: petitioner never raised an equitable estoppel argument before the Board. She only argued for sua sponte reopening.
 - Merits: Even assuming exhaustion, she has not show any affirmative misconduct or that any such misconduct resulted in a serious injustice to her or that public interest favors the remedy of estoppel. AB 15-16.
 - Petitioner failed to exhaust her Equitable Estoppel claim
 - The Board properly considered her motion as solely requesting sua sponte reopening. AB 16-17.
 - Petitioner did not invoke any equitable remedies in her motion other than sua sponte reopening or allege any misconduct by the government's counsel or DHS chief counsel that prevented her from filing a motion, timely or otherwise. AB 17
 - She acknowledged to the Board that she did not get married until after the time for filing a motion to reopen had already passed due to her husband not filing a visa petition on her behalf since his work schedule did not allow him to. AB 17.
 - After noting that the DHS chief counsel would not stipulate to a remand of the first petition for review while the visa petition was pending, and that the government's counsel was likewise waiting, petitioner emphasized USCIS's delay in adjudicating her visa petition. AB 17.
 - However, those brief references to DHS chief counsel, government counsel, and USCIS, unsupported by any citation to legal authority or even to her own supporting evidence, were insufficient to put the Board on notice that it should have considered whether DHS should have been equitably estopped from opposing reopening. AB 17
 - Addressing opening brief arguments
 - Petitioner argues that DHS chief counsel waived any arguments as to timeliness of her motion to reopen. AB 18
 - She later argues that the government's agreement to hold the first petition for review in abeyance resulted in a waiver to oppose a remand of that petition.

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- Petitioner does not cite to any portion of the record to support this claim, but the email to which she apparently refers was sent at a time during which she was not eligible for adjustment of status and she never actually filed a motion to remand her first petition, so the government did not take an official position on remand of the first petition. AB 18 n.5.
- She also claims that the parties entered into an agreement for a joint motion to remand, further agreed to hold the first petition for review in abeyance until the visa petition became ripe for adjudication, and she therefore did not promptly move to remand and instead waited almost two years to bring the motion to reopen. AB 18-19
 - Critically, however, petitioner did not make any of those arguments to the Board, and thus, she failed to exhaust them. AB 19.
- The Board did not err by failing to consider ground for reopening that were never presented to it in the first place. AB 19.
- Similarly, the Board's failure to comment specifically to each piece of evidence attached to Zuan's motion or to reach the conclusion she would have preferred does not establish any error. AB 20
- Petitioner has not met her burden of proving the government should be equitably estopped
 - Basic standard: estoppel is available against a nongovernmental party who has knowingly misrepresented or concealed material facts to someone who is ignorant of the facts, with the intention that the other person rely on the facts as presented, and where the other party actually and detrimentally relies. AB 20-21
 - Heightened standard: a party seeking to raise estoppel against the government must establish affirmative misconduct beyond mere negligence. And, even then, estoppel will only apply where the government's wrongful act will cause a serious injustice and the public's interest will not suffer undue damage by imposition of liability. AB 21
 - No affirmative misconduct
 - Affirmative misconduct: It is defined as a deliberate lie or a pattern of false promises, and mere negligence does not suffice to establish affirmative misconduct. AB 22
 - Here, the government's handling of the first petition for review establishes no affirmative misconduct. The mere non-opposition to petitioner's motion to refer her case to the court's mediation program did not bind the government to the ultimate disposition of that petition. AB 22.
 - Instead, it merely reflects the government's willingness to explore alternatives to litigation, and the evidence petitioner submitted shows the government's willingness to hold the case in abeyance and

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- possible joint reopening before the Board. AB 22.
- Moreover, from the arguments and evidence that petitioner submitted, it is clear that the government had agreed to an abeyance, not to a remand. AB 23.
 - Thus, far from showing any affirmative misconduct, the record shows the government's good faith effort to allow petitioner to explore an alternative remedy that would have made litigation unnecessary. AB 23-24.
 - As for the DHS's chief counsel, petitioner submitted no evidence specifying what, if anything, he told her counsel about his willingness to join in an untimely motion to reopen. AB 24.
 - Petitioner claims that it is undisputed that, in a conversation with her counsel, the DHS counsel indicated he would not oppose remand if OIL did not oppose, but she does not cite any page of the record for support. AB 24, OB 19. However, her attorney's rhetoric is not evidence. AB 24.
 - And, even assuming that the DHS counsel expressed some amiability to joint reopening, conditioned on the approval of her visa petition, there is no evidence that he deliberately lied or concealed material facts. AB 24.
 - USCIS's delay in processing the visa petition did not demonstrate affirmative misconduct either alone or in combination with the government or DHS's actions. AB 25. The Supreme Court and Ninth Circuit have found no affirmative misconduct when considering delay with far more serious consequences than what petitioner presents. AB 25.
 - No show of serious injustice or that public interest favors estoppel
 - Petitioner claims that she did not move to remand due to the government's insistence that an approved I-130 was necessary before it would join the motion to reopen. AB 26, OB 20.
 - However, she does not address the fact that due to the timing of her marriage, she could not have filed a timely motion to reopen, regardless of any action by the government or DHS. AB 26. In other words, she was always going to be in the position of filing an untimely motion and asking the Board to sua sponte reopen. AB 26
 - Petitioner has not shown any injustice has occurred and she remains eligible to seek LPR status but must simply do so via consular processing abroad. AB 26-27. On the other side of the balance is the recognized interest in concluding litigation and executing removal orders. AB 27

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V. ANALYSIS

Key Facts

- On October 1, 2013, the Board dismissed petitioner’s original appeal from an IJ’s decision denying asylum, work, CAT, and voluntary departure. AR 92-95.
- Petitioner filed a timely petition for review. No. 13-73728
- On October 2, 2014, petitioner filed an unopposed motion to refer that petition to the court’s mediation program. Id. at Dkt. No. 17.
 - She sought mediation pending the adjudication by USCIS of a visa petition filed on her behalf by her U.S. citizen husband and concluded saying that the plan is to file a joint motion to remand her case to the Board to pursue adjustment of status once the petition was approved. Id.
 - On December 3, 2018, the court denied in part and dismissed in part the petition for review, concluding it lacked jurisdiction over the agency’s finding that the asylum petition was untimely or her unexhausted CAT claims, and determined that no evidence compelled reversal of the adverse credibility determination. 744 F. App’x 459.
- On September 28, 2017, while her first petition for review was pending, petitioner filed a motion with the Board seeking reopening of her proceedings to apply for adjustment of status. AR 32-36
- In the motion to reopen, she noted that her marriage and the filing of a visa petition occurred after the time for filing a motion to reopen had expired. AR 32
- In a set of emails dated November 15, 2016, petitioner’s attorney emailed government counsel to inform her that USCIS had scheduled an interview regarding the visa petition to ask if she would oppose a motion to remand to pursue adjustment of status. AR 53.
 - Government counsel replied saying the government opposed such a motion at that time, but that if her visa petition were approved and petitioner submitted a motion to reopen to see if they would join or not oppose the motion, the government would not oppose a request to stay the proceedings, pending a decision whether to join or oppose the motion. AR 52.
- In a second set of emails dated nearly nine months later, on August 7, 2021, petitioner’s counsel emailed government counsel to follow up on the issue and informed her that the visa was approved and would be putting a request to ICE for a motion to reopen for adjustment of status. AR 57. He further stated that he it was his understanding that the government would not oppose a stay of proceedings pending resolution of that request. AR 57.
 - The email was returned the same day marked as user unknown because the government counsel had recently retired from the DOJ and the DHS counsel had been appointed to a position as an IJ. AR 58, 80.

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Issue #1: whether the court has jurisdiction to review the Board's decision not to sua sponte reopen Petitioner's case

Rule: the court lacks jurisdiction to review the BIA's denial of sua sponte reopening, unless there is a legal or constitutional error that invokes jurisdiction. See *Lona v. Barr*, 958 F.3d 1225, 1127 (9th Cir. 2020) (the court can review BIA decisions denying sua sponte reopening only for the limited purpose of reviewing the reasoning behind the decision for legal or constitutional error).

A non-citizen fails to exhaust his claim when the claim is not raised before the agency. *Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

Analysis:

The motion to reopen argues *only* that the Board should reopen proceedings sua sponte. See AR 33-36. Petitioner *does* explain that the motion is untimely and why it is untimely, along with the background correspondence between her counsel and the former DHS and government attorneys. However, she does *not* present any arguments in conjunction with that background information. AR 33-36. Indeed, the main argument section of the motion specifically states that the petitioner asked the Board to reopen her case sua sponte, AR 35, and nowhere else in the motion does she identify another basis upon which the Board could reopen her case, see AR 32-36.

In her opening brief, petitioner argues that the Board erred by considering the motion entirely under its sua sponte authority. OB 20-24. She claims that the Board erred because it did not mention her argument, or the evidence of correspondence between the parties, that she used to demonstrate the existence of an agreement. She further highlights that the Board did not conduct an analysis of detrimental reliance or equitable estoppel and did not consider the merits and equities of the case. OB 22-23.

To determine whether there is colorable legal claim, I think it makes sense to analyze exhaustion rather than the estoppel claim. Although petitioner spends most of her opening brief arguing the estoppel claim, that claim was not actually before the Board. In other words, although she first argues that the government should be estopped, OB 10-20, and then argues second that the Board failed to consider those arguments, OB 20-24, that is not the proper order of the analysis. Instead, the analysis should first be whether those arguments were actually before the Board for it to consider them and second, if they were, whether the Board committed a legal error in exercising its discretion.

As I stated above, the motion to reopen *did not* include any reference at all to a basis for the Board to reopen her case other than the Board's sua sponte authority. AR 32-36. Moreover, she was counseled before the Board when she submitted the motion to reopen. AR 32. So, although she claims the Board erred by considering the motion to reopen solely under its sua sponte authority, the record demonstrates that is actually the only basis she relied upon. Therefore, that is the only basis properly before the Board and petitioner's arguments as to equitable estoppel are unexhausted and do not constitute a colorable legal claim.

NOTE: To the extent petitioner argues the merits of her equitable estoppel claim, the court lacks

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jurisdiction to consider these unexhausted arguments.

Conclusion: Therefore, the court lacks jurisdiction to review the Board's decision not to sua sponte reopen petitioner's case where she has not shown that the agency's denial of sua sponte reopening was premised on legal or constitutional error.

Issue #2: Assuming arguendo that these arguments have been exhausted, is remand warranted based on the doctrine of equitable estoppel?

Rule: "[E]stoppel traditionally is available against a nongovernmental party who has made a knowing false representation or concealment of material facts to a party ignorant of the facts, with the intention that the other party should rely on it, where the other party actually and detrimentally relies on it. A party asserting estoppel against the federal government bears additional burdens. First, estoppel against the government must rest on affirmative misconduct going beyond mere negligence. Furthermore, estoppel will apply only where the government's wrongful act will cause a serious injustice, and the public's interest will not suffer undue damage by imposition of the liability." See *Mukherjee v. INS*, 793 F.2d 1006, 1008 (1986) (citing *Jaa v. INS*, 779 F.2d 569, 571 (9th Cir. 1986)); see also *Morgan v. Gonzales*, 495 F.3d 1084, 1092 (9th Cir. 2007).

Analysis:

I. No affirmative misconduct by the government

Petitioner highlights a motion to hold the case in abeyance where she stated that "The plan is to file a joint motion to remand the case[.]" OB 16-17, Case No. 13-73728, Dkt. No. 17. Petitioner also states that "there was an agreement in principle by the parties to hold the direct appeal in abeyance [and] . . . [it] was the understanding of the parties that once th[e] petition [was] approved, there would be no opposition by Oil to a motion to remand[.]" OB 19. However, petitioner does not cite to any part of the record to support her claim that the parties agreed the government would not oppose a motion to remand. Accordingly, her claim that her counsel and the government's agreed there would be no opposition is unsupported by the record and does not establish that such an agreement existed. See *INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984) (counsel's unsupported claims in a brief do not constitute evidence).

Additionally, the evidence that petitioner submitted demonstrates that the government's counsel agreed only to an abeyance, not to a remand. In late 2016, petitioner's counsel emailed asking whether government's counsel would oppose a motion to remand but made no mention of an existing agreement to remand. AR 53. Then, months later, her attorney emailed the government attorney to confirm his understanding that the government would not oppose a stay of proceedings pending his request to DHS to join a motion to reopen. AR 57. Finally, in the motion to reopen itself, petitioner describes the correspondence with government counsel as the government agreeing not to oppose putting the case in abeyance to allow her to pursue a motion to reopen with DHS at the Board. AR 33. Thus, the record shows that government's counsel did not oppose petitioner's efforts to hold her case in abeyance but that holding the case in abeyance is the only

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thing to which the parties agreed.

As to the delay by USCIS that petitioner highlights, it did not constitute any affirmative misconduct. OB 7. First of all, petitioner acknowledges that the marriage took place out of the 90 day period to file a motion to reopen. OB 7. So, whatever delay the USCIS had in adjudicating the visa petition would not have affected her ability to timely file the motion. Second, the government cites the following cases in which the Supreme Court and the Ninth Circuit found no affirmative misconduct despite agency delays with far more serious consequences than the one petitioner presents.

- INS v. Miranda, 459 U.S. 14, 16, 19 (1982) (no affirmative misconduct where an unexplained 18-month delay in adjudicating spousal visa application even where the delay resulted in the petitioner losing eligibility due to dissolution of the marriage during that time)
- Cortez-Felipe v. INS, 245 F.3d 1054, 1057 (9th Cir. 2001) (INS's failure to file order to show cause in time for petitioner to avoid impact of subsequent statutory changes was not affirmative misconduct, even though the INS had assured the petitioner it would do so)

Those cases demonstrate that even where the government has delayed in such a way that it actually affects a petitioner's ability to seek relief, there is no affirmative misconduct. Here, nothing the government did affected petitioner's ability to seek relief because she was always going to be in the position of filing an untimely motion to reopen [and the BIA faulted petitioner for the delay in filing the I-130 visa petition, NOT for the delay in the final adjudication of the I-130 or the delay in filing the MTR)].

Thus, petitioner failed to show negligence, let alone affirmative misconduct.

II. No governmental misconduct resulting in serious injustice and no public interest favoring estoppel

Petitioner claims that she did not promptly move to remand because the government's counsel insisted that an approved I-130 was necessary before she joined the motion to reopen, OB 20, but, as stated above, petitioner does not address the fact that she could not have filed a timely motion to reopen regardless of any action by a government official because she was married past the 90-day deadline [nor does this explanation change the fact that her spouse delayed as long as he did in filing the I-130 visa petition in the first place]. Thus, there is no serious injustice that resulted from government misconduct.

Additionally, petitioner is still able to apply for LPR status through her marriage but must simply do so from abroad. See 8 U.S.C. § 1201(a)(1), 1361. And, there is a recognized public interest in bringing litigation to a close and promptly executing removal orders. See INS v. Abudu, 485 U.S. 94, 95 (1988); see also Nken v. Holder, 556 U.S. 418, 436 (2009) (observing that there "is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings . . . and permits and prolongs a continued violation of United States law.")

Thus, given the lack of any significant harm to petitioner, the public interest prevails.

Conclusion: Petitioner did not establish that the government should be equitably estopped

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Etc. if necessary:

VI. QUESTIONS/CONCERNS

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Addendum

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Y [REDACTED] X [REDACTED]

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 19-[REDACTED]

Agency No. A-[REDACTED]

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February [REDACTED], 2022**

Before: F [REDACTED], T [REDACTED], and F [REDACTED], Circuit Judges.

Y [REDACTED] X [REDACTED] a native and citizen of China, petitions for review of the Board of Immigration Appeals (“BIA”) order denying her motion to reopen removal proceedings to apply for adjustment of status. Our jurisdiction is governed by 8 U.S.C. § 1252. We dismiss the petition for review.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

1 We lack jurisdiction to review the BIA’s determination not to reopen
2 removal proceedings where X■■■■ does not raise a colorable legal or constitutional
3 error underlying the BIA’s decision that would invoke our jurisdiction. *See Lona*
4 *v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020) (the court retains jurisdiction to
5 review BIA decisions denying sua sponte reopening for the limited purpose of
6 reviewing the reasoning behind the decision for legal or constitutional error). We
7 lack jurisdiction to consider X■■■■’s contentions as to equitable estoppel that she
8 raises for the first time in her opening brief because she did not raise them to the
9 BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks
10 jurisdiction to review claims not presented to the agency). To the extent X■■■■ now
11 contends her motion to reopen qualifies for an exception to the statutory
12 requirement of timely filing, we lack jurisdiction to consider this unexhausted
13 issue. *See id.*

14 The temporary stay of removal remains in place until issuance of the
15 mandate.

16 **PETITION FOR REVIEW DISMISSED.**

Applicant Details

First Name **Daniel**
 Middle Initial **T**
 Last Name **Morrison**
 Citizenship Status **U. S. Citizen**
 Email Address dtm1210@gmail.com

Address

Address
Street
6 River Knoll
City
Westport
State/Territory
Connecticut
Zip
06880

Contact Phone Number **2032468680**

Applicant Education

BA/BS From **Boston College**
 Date of BA/BS **May 2012**
 JD/LLB From **Fordham University School of Law**
https://www.fordham.edu/info/29081/center_for_judicial_engagement_and_clerkships
 Date of JD/LLB **May 18, 2020**
 Class Rank **I am not ranked**
 Law Review/Journal **Yes**
 Journal(s) **Fordham International Law Journal**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Naiburg, Jennifer
JLNaiburg@queensda.org
(718) 286-6523
Baker, Mike
BakerMic@SEC.GOV
202-551-4471

References

Joe Marutollo
Assistant United States Attorney, United States Attorney's Office,
Eastern District of New York
Joseph.marutollo@usdoj.gov
(718) 254-6288

Jenn L. Naiburg
Bureau Chief, KGIII for Queens County District Attorney's Office
JLNaiburg@queensda.org
(718) 286-6523

Mike Baker
Senior Counsel, Enforcement Division, U.S. Securities and Exchange
Commission
bakermic@sec.gov
(202) 551-4471

Jeff Tiani
Senior Associate, GarMark Partners
jeff.tiani@gmail.com
203-984-3057

This applicant has certified that all data entered in this profile and any application documents are true and correct.

The Honorable Elizabeth W. Hanes

Dear Judge Hanes:

I am writing in support of my application for the clerkship in your chambers. I am confident that my judicial clerkship experience at the state level in NJ, writing and research skills, commitment to public service, and work experience before law school would enable me to successfully carry out the responsibilities of a law clerk.

This August, I plan to begin a one-year clerkship with a state trial court judge, the Honorable Robert E. Brenner. Sitting in Toms River, NJ, Judge Brenner handles civil litigation matters. I anticipate that my primary duties will be to review motions and memoranda filed in civil matters, assist with the preparation of bench memoranda, as well as draft opinions. In addition, I believe that I will have a role in assisting Judge Brenner during proceedings, communicating with counsel regarding case management, and assisting in settlement conferences. Outside of chambers, I will serve as a mediator for parties who have small claims and landlord/tenant disputes. I strongly believe that these upcoming experiences will prepare me for handling the duties of a judicial law clerk in your chambers.

In law school, I have worked to build the legal research and writing skills that I believe will allow me to undertake the responsibilities of a federal judicial law clerk. I was selected by my peers to serve as a Notes & Articles Editor of the *Fordham International Law Journal* during the 2019-2020 academic year. In this role, I have managed a team of seven law students and maintained responsibility over those students' proofreading and Bluebooking of articles. Additionally, before transferring to Fordham Law School, I was invited to join the PACE LAW REVIEW on the basis of my performance in the Pace Law School writing competition.

I believe that my commitment to public service will complement my work as a law clerk in your chambers. I have completed internships with the Civil Division of the US Attorney's Office for the Eastern District of New York, the Queens County District Attorney's Office, and the Securities and Exchange Commission. Last summer, I completed my second internship with the Securities and Exchange Commission, where I first worked as a part-time intern in the NY office during the fall semester. Interning in the public sector during law school has strengthened my interest in serving the interests of justice in my community.

My pre-law school work experience as an investment banking analyst, and my study for the Masters in Finance degree, provided a foundational understanding of business concepts and theories. I expect that my knowledge of business concepts would assist me in performing legal research and applying my legal research to complex business disputes. My work experience makes me comfortable in a deadline-driven environment. If given the opportunity to serve as a law clerk in your chambers, I am confident of my ability to follow direction and to meet deadlines.

I believe my judicial clerkship experience at the state level, writing and research skills, commitment to public service, and work experience before law school would assist me in serving as your law clerk. Thank you for your consideration of my application.

Sincerely,
Daniel Thomas Morrison

Email: dtm1210@gmail.com
Phone: 203-246-8680

DANIEL T. MORRISON

203-246-8680 | dtm1210@gmail.com

EDUCATION

Fordham University School of Law

- Notes & Articles Editor, *Fordham International Law Journal*, Volume XLIII
- Queens District Attorney's Office Prosecution Clinic – Spring 2019

New York, NY
Aug. 2018 – May 2020

Elisabeth Haub School of Law at Pace University

- Honors: Invited to join PACE LAW REVIEW in June 2018
- Elected as student government representative

White Plains, NY
Aug. 2017 – Aug. 2018

Boston College, Carroll School of Management

- Masters in Finance, GPA: 3.5

Chestnut Hill, MA
Aug. 2013 – Sept. 2014

Boston College, College of Arts and Sciences

- Bachelors in Arts, Major: Economics, GPA: 3.3

Chestnut Hill, MA
Aug. 2008 – May 2012

LEGAL EXPERIENCE

New Jersey State Courts – Superior Court – Ocean County, Civil Division [*Anticipated*]

Judicial Law Clerk to the Honorable Robert E. Brenner

Toms River, NJ
Aug. 2020 – Aug. 2021

- Conduct legal research, draft judicial opinions, and provide recommendations on all motions before the court
- Help prepare the judge for trials, oral arguments, and other proceedings
- Mediate small claims and landlord/tenant disputes

U.S. Securities and Exchange Commission

Enforcement Division Intern

Washington, DC // New York, NY
May 2019 – Aug. 2019 // Aug. 2018 – Nov. 2018

- Prepared chronology of events that tracked an alleged market manipulation scheme targeting the shares of a publicly traded technology company
- Drafted questions utilized by supervisor during on-the-record testimony of alleged insider trading participant
- Conducted comprehensive review of more than 1,500 documents for the purpose of flagging a broker's misstatements to clients and prospective clients

United States Attorney's Office - Eastern District of New York

Civil Division Intern

Brooklyn, NY
May 2018 – Aug. 2018

- Prepared and delivered an oral argument in social security matter as second chair
- Performed legal research and writing in support of Assistant United States Attorney, including drafting part of a reply brief in support of a 12(c) motion for judgment on the pleadings and drafting a letter in support of a Rule 41(b) motion for failure to prosecute

The StoneTurn Group

Consultant

Boston, MA
Sept. 2012 – Aug. 2013

- Drafted sections of expert reports submitted in arbitration and litigation proceedings
- Coordinated and conducted document productions

FINANCIAL EXPERIENCE

Headwaters MB

Investment Banking Analyst

Greenwich, CT
Oct. 2016 – July 2017

- Prepared valuation summary using public comparables, M&A comparables, DCF and LBO analyses
- Created PowerPoint presentation slides identifying industrial companies' financial and transactional metrics in connection with team business development efforts

Janney Montgomery Scott

Investment Banking Analyst

Philadelphia, PA
May 2015 – May 2016

- Drafted committee memos and internal sales memos in connection with public securities transactions
- Utilized external research databases and updated Excel workbooks tracking pricing and trading of recent IPOs, follow-ons, and PIPEs

Headwaters MB

Investment Banking Analyst

Greenwich, CT
Sept. 2014 – May 2015

- Created one-page company profiles, based on industry and company-level research
- Generated prospective investor lists in connection with investor outreach efforts

ADDITIONAL INFORMATION

Computer: Microsoft Word, Excel, PowerPoint, Westlaw, LexisNexis, Capital IQ, and FactSet

Daniel Morrison
Fordham University School of Law
Cumulative GPA: 3.2

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Randolph McLaughlin	B	5	
Criminal Law	Thomas McDonnell	B+	3	
Legal Writing	Irene Johnson	A-	3	
Torts	Michelle Simon	B+	3	

Fall 2017 - Pace Law School

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Bennett Gershman	B+	4	
Contracts	Horace Anderson	B	4	
Legal Writing	Michelle Simon	A	2	
Property	John Nolon	B-	5	

Spring 2018 - Pace Law School

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Procedure	Deborah Denno	B-	3	
Evidence	Daniel Capra	B	4	
Externship Fieldwork	Stacy Charland	P	2	
Externship Seminar	Stacy Charland	A-	1	
Professional Responsibility	Andrew Kent	B	3	

Fall 2018 - Fordham Law School

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Fundamental Lawyering Skills	Marissa Sherman	B+	3	
Legislation & Regulation	Aaron Saiger	B-	4	
Queens DA Casework	Jennifer Naiburg	A-	3	
Queens DA Seminar	Jennifer Naiburg	A-	2	
Trusts & Wills	Deborah McCarthy	B	3	

Spring 2019 - Fordham Law School

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Corporations	Richard Squire	B	4	
International Financial Crime	Gerald Manwah	A-	2	
International Law Journal	James Kent	P	2	
Regulation of Financial Institutions	Steve Thel	A-	3	

Securities Regulation	Jim Jalil	B	3
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Fall 2019 - Fordham Law School

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Litigation Drafting	Francine Alfandary	P	3	
International Law Journal	Andrew Kent	P	2	
Mergers & Acquisitions	Daniel Kessler	P	3	
Perspectives on Doctrinal Analysis	John Pieper	P	2	
Trial Advocacy	Gail Heatherly	P	3	

Spring 2020 - Fordham Law School

*Due to the coronavirus pandemic, Fordham decided that all classes would be graded on a P/F basis.



Richard A. Brown
District Attorney

**DISTRICT ATTORNEY
QUEENS COUNTY**
125-01 QUEENS BOULEVARD
KEW GARDENS, NY 11415-1568
(718) 286-6000

May 26, 2020

To Whom it May Concern:

It is my pleasure to write this letter of recommendation on behalf of Daniel Morrison. Mr. Morrison participated as a Student Prosecutor in the Queens County District Attorney Prosecution Clinic that I co-teach at Fordham Law School spring semester, 2019.

During his clinical internship, Mr. Morrison worked closely with several of the prosecutors in the Criminal Court Bureau. The feedback that I consistently got from these Assistants District Attorneys was that Mr. Morrison was hardworking, enthusiastic and bright. They felt he was a team player and a very affable person.

More importantly, I got to see Mr. Morrison's work first hand throughout the semester. I found that he was well organized, professional and very diligent in carrying out his responsibilities. I have repeatedly been impressed by his strong work ethic and common sense approach to our cases. He demonstrated a sincere desire to learn about criminal practice. He accomplished whatever needed to be done competently and quickly and was an active and valuable participant both inside the classroom and at the office.

In short, it was a sincere pleasure to have Mr. Morrison here in our office as part of the clinic. It is without hesitation that I recommend him for your employ.

If you have any questions or if I can be of any further assistance, please do not hesitate to call.

Very truly yours,

Jennifer L. Naiburg
Chief Assistant District Attorney
Queens County District Attorney's Office
JLNaiburg@queensda.org
(718) 286-6523



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 31, 2020

Dear Sir or Madam:

My name is Michael Baker, and I am a Senior Counsel in the Enforcement Division of the United States Securities and Exchange Commission in Washington, D.C. I write this letter of recommendation on behalf of Dan Morrison, who is applying for a federal clerkship with your chambers.

Dan was an intern with my group in the summer of 2019. During his time with us, he showed that he is detail-oriented and quick to absorb complex concepts, and was a thoughtful contributor on our investigations.

During his internship, Dan assisted us in several of our active investigations. For instance, I asked him to join several telephonic interviews of witnesses connected to an ongoing insider trading investigation. During those interviews, Dan took detailed notes and prepared typed memoranda documenting the findings from the interviews. Confident in Dan's attention to detail and ability to produce well-written memos, I had him directly circulate the memoranda to the other attorneys on the investigative team.

Beyond his role helping to memorialize witness calls, Dan researched legal theories for certain of our investigations, and, for one of our investigations, he took the lead on compiling and analyzing a complex data set, which entailed reviewing numerous account documents for evidence of securities fraud and presenting his findings to me and others in my unit. Dan worked diligently, and sought out more work, when he had capacity. I am confident that Mr. Morrison would demonstrate the same level of commitment and enthusiasm as a judicial law clerk in your chambers.

In summary, Dan would make the ideal clerk, and I enthusiastically recommend him for that position in your chambers.

Please feel free to contact me at (202) 551-4471 or at bakermic@sec.gov if you have any questions.

Sincerely,
/s/ Michael C. Baker
Michael C. Baker
Senior Counsel

Daniel Thomas Morrison – Spring 2018

State X should not adopt a rule allowing the local chapter of a fraternity to be sued for a non-hazing injury suffered by one of its members. The following memo will present the facts of our case; review the law relating to the liability of local fraternity chapters; and analyze our facts in light of precedent and the secondary authority to establish that the State X court should not permit suits against local fraternity chapters brought by injured members based on the injured members' participation in non-hazing events.

Twenty-one-year-old Jim "Pluto" Plutarsky, a member of the Pi Lambda Rho (PLR) local chapter fraternity at Garfield University since April 14, 2013, attended a party hosted by PLR that featured a grand prix charity go-cart race to be held at Garfield University. The social chairmen of PLR purchased alcoholic beverages for the party, and those beverages were delivered by Bar Barry Liquors, the local liquor distributor. Around 11 A.M. on April 27, 2015, Plutarsky arrived at the PLR chapter house and began to consume a combination of beer and mixed drinks. Plutarsky attended the grand prix race and then returned to the PLR fraternity house at 4 P.M. Soon after his return to the fraternity house, Plutarsky consumed two additional mixed drinks. He then decided to ride down the waterslide that was set up for the party.

The members of PLR had used smooth-surface material to build the waterslide, which contained two water-flowing hoses at the waterslide's top. At the bottom of the waterslide was a pool made up of hay bales. The members of PLR kept a ladder next to the waterslide as a means for reaching the top of the waterslide. PLR charged two dollars for each trip down the waterslide, donated half the proceeds to charity, and kept the remaining half to fund the party.

After having consumed several alcoholic beverages, Plutarsky paid the two-dollar charge. Plutarsky decided against using ladder accompanying the waterslide, and instead climbed on a brick wall next to a patio on the PLR property, seeking to make his trip down the waterslide

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more thrilling, and to impress his audience. After removing his shoes, socks and watch, Plutarsky dove head-first onto the waterslide, approximately six to eight feet below the wall that Plutarsky had climbed, and tragically broke his neck, becoming a quadriplegic.

On October 30, 2015, Plutarsky brought an action against the local chapter of PLR, alleging that his injuries were due to the local chapter's inadequate maintenance of the waterslide and supply of alcoholic beverages. Plutarsky also brought actions against the national PLR fraternity, Bar Barry Liquors, and the Garfield University House Association. The trial court granted the defendants' motions for summary judgment. Plutarsky then filed an appeal in State X appellate court, claiming that the trial court erred in finding as a matter of law that the local chapter of PLR cannot be held liable for the negligent actions of its members.

The issue is whether or not the State X court should adopt a rule permitting the local fraternity chapter to be sued by a member of the fraternity who suffered a non-hazing injury. Current law recognizes many local chapters of fraternities and sororities as unincorporated associations.¹ As unincorporated associations, local chapters are often shielded from facing liability in connection with non-hazing injuries to their members.² In Massachusetts, for example, an unincorporated association cannot be named as party to litigation.³ Separately, the doctrine of imputed liability permits the negligence of an association, where members are organized in a joint enterprise, to be imputed upon an individual fraternity member.⁴

The doctrine of imputed liability will not, however, preclude a fraternity member injured from a non-hazing activity from asserting liability against culpable fraternity members, and

¹ See Angela N. Marshlain, *Non-Hazing Injuries to Fraternity and Sorority Members: Should the Fraternal Association Be Required to Assume a Parental Role?*, 5 APPALACHIAN J.L. 1, 5 (2006).

² *Id.*

³ *Krueger v. Fraternity of Phi Gamma Delta, Inc.*, No. 004292G, 2001 WL 1334996, at *6 (Mass. Super. Ct. May 18, 2011) (citing *Save the Bay, Inc. v. Department of Pub. Utils.*, 366 Mass. 667, 675 (1975)).

⁴ Marshlain, *supra* note 1, at 6.

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thereby seeking redress for his injury.⁵ An illustrative case is *Foster v. Purdue University Chapter, The Beta Mu of Beta Theta Pi*.⁶ In that case, the plaintiff, Foster, injured himself after diving headfirst onto a fraternity's waterslide.⁷ The court found that the plaintiff had participated in the informal decision-making process of the fraternity, and that any negligence by the fraternity members in negligently maintaining the waterslide or providing alcohol was "properly imputable to Foster."⁸ Separate from the *Foster* holding, there is persuasive authority that an injured fraternity member can seek to impose liability on fraternity members for his injuries, where he can prove more than the defendant fraternity member's mere membership in the fraternity.⁹ This authority makes clear, however, that the defendant local fraternity member will be liable to the injured fraternity member "only if the [defendant] member participates in the tortious act, sets the proceedings in motion, agrees to a course of action which culminates in wrongful conduct, or has knowledge of, or assents to, the act."¹⁰

The foregoing shows that the law permits an injured fraternity member to seek to hold liable those defendant fraternity members who had motivated or contributed to the wrongful decision-making and the subsequent non-hazing activity that produced the injury. Although the legal requirement of proving more than membership in the fraternity represents a significant hurdle to the injured member's ability to recover, this limitation targets individual members' culpability, and rightfully guards against guilt by mere association with an organization, namely, the local fraternity chapter.

⁵ See Marshlain, *supra* note 1, at 5.

⁶ *Id.* (citing *Foster v. Purdue University Chapter, The Beta Mu of Beta Theta Pi*, 567 N.E.2d 865 (Ind. 1991)).

⁷ *Id.* (citing *Foster*, 567 N.E.2d at 867).

⁸ *Id.* (quoting *Foster*, 567 N.E.2d at 865).

⁹ See 36 AM. JUR. 2D *Fraternal Orders and Benefit Societies* § 137 (2006).

¹⁰ *Id.*

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In addition, the reduced level of *mens rea* of knowledge expressed in the legal authority¹¹ will permit an injured plaintiff to assert liability against individual fraternity members, even if they act without the higher *mens rea* of purpose during the wrongful non-hazing activity that caused the injury. This principle was applied in *Sitrin v. Meneghini*.¹² In that case, a non-member individual injured by a beer bottle thrown by a fraternity member brought suit against the entire fraternity.¹³ The *Sitrin* court held that “membership in an unincorporated voluntary association...cannot alone impose liability on all members of that association for the actions of a single member which occurred without their knowledge or approval.”¹⁴ Analogous to the facts involving PLR, the court further held in *Sitrin* that even if other fraternity members were present at the time of the plaintiff’s injury and were held liable for the plaintiff’s injuries, “their negligence could not be imputed to the entire fraternity.”¹⁵

Moreover, courts in similar cases have declined to impose liability on individual fraternity members if they only contributed money or dues towards the fraternity’s general purpose and did not directly encourage or approve the wrongful conduct.¹⁶ In this matter, there is no indication that the PLR fraternity members, who were present at the time of Plutarsky’s injurious act of climbing and jumping off the wall, had prior knowledge of, or approved, Plutarsky’s act. Moreover, to the extent fraternity members present at the time of Plutarsky’s injury only paid general dues and supported the local chapter by paying the two-dollar charge to ride the waterslide, they would not be held liable. Here, Plutarsky decided to climb the wall and jump on the waterslide because he wanted to make the trip down the waterslide more thrilling

¹¹ *Id.*

¹² *Id.* at 9 (citing *Sitrin v. Meneghini*, 1996 Mass. App. Div. 148, 1).

¹³ *See id.* at 9 (citing *Sitrin* at 1).

¹⁴ *Id.* at 10 (quoting *Sitrin* at 2).

¹⁵ *Id.*

¹⁶ *See id.* (citing 36 AM. JUR. 2D *Fraternal Orders and Benefit Societies* §49, 137 (2004)).

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and to impress spectators. In such circumstances, the PLR fraternity should not be held liable for Plutarsky's non-hazing injury, because it and its members did not endorse or ratify Plutarsky's behavior. There is therefore no compelling need to impose liability on incorporated associations, such as local chapters of a fraternity, because current law allows members of fraternities injured in non-hazing activity to recover against those directly responsible for causing or contributing to the member's non-hazing injuries.¹⁷

The protections afforded a local fraternity chapter are further supported by the absence of a special relationship between the local chapter and the injured member that might create a duty of care on the chapter's part with respect to the injured fraternity member.¹⁸ The *Restatement* describes two situations that are relevant to a local fraternity chapter's non-hazing activities. Each such situation, however, falls short in establishing a special relationship between the local fraternity chapter and the injured member.¹⁹ The first instance giving rise to a special relationship is when a possessor of land invites members of the public onto her or his own land.²⁰ The second instance that establishes a special relationship is when one is required by law, or voluntarily takes the custody of another under circumstances that one deprives another of his or her normal opportunities for protection.²¹

Applying this test to the facts reveals that the first situation does not establish liability on the part of PLR, because there is no indication from the facts presented that the party and charity race were open to the public. Although the go-cart charity race was on Garfield University property, the waterslide, where Plutarsky suffered his injury, stood on property possessed by

¹⁷ See 36 AM. JUR. 2D *Fraternal Orders and Benefit Societies* § 137 (2006).

¹⁸ See Marshlain, *supra* note 1, at 12 (citing *University of Denver v. Whitlock*, 744 P.2d 54, 58 (Colo. 1987)).

¹⁹ See RESTATEMENT (SECOND) OF TORTS § 314A (AM. LAW INST. 1965).

²⁰ *Id.* at § 314A(3).

²¹ *Id.* at § 314A(4).

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PLR. While the facts are silent about who had received invitations to use the waterslide, it appears that use of the waterslide was exclusive to members of the Garfield University Greek life community, because the slide was on PLR's possessed property. To the extent PLR did not offer the waterslide event to the public, and given that PLR's conduct did not trigger a special relationship and duty of care on PLR's part to the injured Plutarsky, PLR should not be held liable. The second instance similarly does not establish PLR's liability premised on a special relationship. Here, PLR's actions of providing a waterslide and the accompanying ladder were not custodial in nature, given the short duration of each trip down the waterslide.

An instructive case is *Coghlan v. Alpha Phi Sorority*²² in which the court identified several factors to determine whether an affirmative duty of care, arising from a special relationship, exists based on voluntary action.²³ Those factors include: the foreseeability of injury to the plaintiff member;²⁴ the closeness of the connection between the defendant's conduct and the plaintiff's injury;²⁵ and the moral blame of the defendant's conduct.²⁶ In the case at hand, even though alcohol was served at PLR's party, it was unforeseeable to this local fraternity chapter that a member would climb the wall and dive headfirst onto the waterslide, because there was no PLR competition or contest requiring such action. Although it might be argued that the connection between PLR's party and the plaintiff's waterslide injury is not remote, it was nevertheless an insufficiently close connection, because Plutarsky's behavior on the wall sharply contrasts with other fraternity members' presumably non-injurious use of the slide. Still, there is no indication that anyone else was injured using the waterslide similar to Plutarsky. Another

²² 987 P.2d 300 (Idaho 1999).

²³ See *id.* (quoting *Rife v. Long*, 908 P.2d 143, 148 (Idaho 1995)); *Issacs v. Huntington Mem'l Hosp.*, 695 P.2d 653 (Cal. 1985).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Daniel Thomas Morrison – Spring 2018

consideration is that there is weak moral blame for PLR's party, to the extent a charity received half of the proceeds from the two dollars charged for each waterslide ride.

The *Coghlan* court affirmed the lower court's decision that a local sorority chapter's limited influence over Coghlan, an underage and injured member, did not constitute a special relationship sufficient to generate an affirmative duty for Alpha Phi to aid or protect Coghlan from injuries resulting from Coghlan's voluntary intoxication.²⁷ In *Coghlan*, the member suffered non-hazing injuries after she consumed large amounts of alcohol. Afterwards, she received an escort from a fellow member of her sorority to a bed in her sorority house, where she later fell thirty feet from a fire escape and suffered permanent injuries.²⁸ Although the *Coghlan* court held that there was no special relationship between the local sorority chapter and the injured member, it found that both Alpha Phi's appointment of a so-called guardian angel to watch over the plaintiff before the accident, coupled with Alpha Phi's knowledge that alcohol would be served to underage members, were relevant factors in assessing whether Alpha Phi had a special relationship and thus a duty of care to the injured Coghlan.²⁹ Applying these principles to this matter compels the conclusion that PLR's relationship with Plutarsky should be viewed in a light similar to how the *Coghlan* court viewed the Alpha Phi and Coghlan relationship. Here, similar to Coghlan, Plutarsky consumed several drinks, containing liquor, before putting himself in danger, which occurred when Plutarsky climbed the wall next to the waterslide, and dove headfirst onto the slide. Unlike Alpha Phi in *Coghlan*, PLR failed to assign a guardian angel to Plutarsky, or take other measures so as to exercise an affirmative act towards Plutarsky sufficient to create a special relationship. Since PLR's actions fall short of constituting an affirmative act

²⁷ *Id.* at 313.

²⁸ *Id.* at 305.

²⁹ *Id.* at 314.

Daniel Thomas Morrison – Spring 2018

so as to create a special relationship with Plutarsky, and PLR's actions resemble neither the first situation nor the second situation under *Section 314(A)*, and because the balance of factors does not indicate a special relationship, it is clear that PLR did not have a special relationship with, and a corresponding duty of a care to, the injured fraternity member, Plutarsky.

Local chapters of fraternities that do not exert control over members' conduct occurring on their properties should not face liability. Such absence of responsibility is consistent with courts' increased recognition of greater university student autonomy and universities' diminished liability for student conduct.³⁰ Local fraternity chapters should be afforded the same considerations extended to universities, because both universities and local fraternity chapters are supposed to encourage independence and personal responsibility among their students and members. Moreover, both universities and local fraternity chapters "are not expected to assume a role anything akin to *in loco parentis* or a general insurer."³¹ Before the 1970s,³² universities stood in *loco parentis*³³ to their students, exercising "delegated parental authority with a concomitant duty of broad protection."³⁴ Before the collapse of the *in loco parentis* doctrine, universities held parental authority, and wielded wide control over the moral and physical welfare of their students.³⁵ The court in *Bradshaw v. Rawlings*³⁶ effectively ended the application of the *in loco parentis* doctrine to universities, finding that college students were increasingly recognized as adults in community life.³⁷ Moreover, the *Bradshaw* court held it was improper for

³⁰ See Kerri Mumford, Comment, *Who Is Responsible for Fraternity Related Injuries on American College Campuses?*, 17 J. CONTEMP. HEALTH L. & POL'Y 737, 738 (2001).

³¹ Rothman v. Gamma Alpha Chapter of Pi Kappa Alpha Fraternity, 599 So. 2d 9, 11 (Ala. 1992) (quoting Campbell v. Board of Trustees 495 N.E.2d 227,232 (Ind. Ct. App. 1986)).

³² Mumford, *supra* note 30, at 739.

³³ *In Loco Parentis*, BLACK'S LAW DICTIONARY (8th ed. 2004) ("in the place of a parent").

³⁴ Mumford, *supra* note 30, 739-40 (citing Furek v. University of Delaware, 594 A.2d 506, 516 (Del. 1991).

³⁵ See *id.* (citing Gott v. Borea Coll., 161 S.W. 204 (Ky. 1913)).

³⁶ *Id.* (citing Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979).

³⁷ *Id.* (quoting Bradshaw, 612 F.2d at 138).

Daniel Thomas Morrison – Spring 2018

universities to hold a custodial relationship. Instead, it adopted the “no duty” doctrine³⁸, effectively establishing the absence of a special relationship between universities and students, and consequently relieving universities of a duty of care to students. Although the court in *Furek v. University of Delaware*³⁹ did find that a special relationship existed, courts have generally been reluctant to follow the reasoning in *Furek*,⁴⁰ and have held that a university’s regulation of Greek life does not by itself establish the university’s duty of care and corresponding legal liability.⁴¹ In other words, persuasive authority holds that legal liability on the university requires a finding that the university had acted to control the activity that caused the alleged injury.⁴² The same principle should be applied to local chapters of fraternities that do not exert control over members’ conduct, and they should not face liability.

The local fraternity chapter’s immunity is not impenetrable, because the courts have held that the local fraternity chapter can be liable in tort when its members act “collectively in prosecution of the business for which [the local fraternity chapter] is organized.”⁴³ Accordingly, the fraternity can be responsible when it has encouraged or ratified its members’ actions.⁴⁴ Mere loyalty of fraternity members is not sufficient evidence of action on behalf of the fraternity.⁴⁵ This principle was set forth in *Rothman*, where the court held that liability cannot be asserted against a local fraternity chapter for acts of certain members during situations when the members are not under the control of the local fraternity chapter.⁴⁶ In this matter, PLR did not exercise

³⁸ *Id.* at 741 (quoting *Bradshaw* at 138).

³⁹ *Id.* at 746 (citing *Furek v. University of Delaware*, 594 A.2d 506 (Del. 1991)).

⁴⁰ See Mumford, *supra* note 30, at 746

⁴¹ See *id.* at 749.

⁴² *Id.*

⁴³ *Rothman v. Gamma Alpha Chapter of Pi Kappa Alpha Fraternity*, 599 So. 2d 9,10 (Ala. 1992) (quoting 7 C.J.S. *Associations* § 38 (1980)).

⁴⁴ *Id.*

⁴⁵ *Id.* at 11.

⁴⁶ *Id.*

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control over Plutarsky, and therefore should not face liability because it did not encourage or ratify Plutarsky's decision to disregard the ladder alongside the waterslide, climb the wall, and dive headfirst onto the waterslide. Plutarsky's decision was not in response to a challenge issued by PLR but rather, arose out of Plutarsky's compulsive actions and desire for attention. Non-hazing activities, such as those organized by PLR, demonstrate the local fraternity chapter's lack of active control over the activities of its fraternity members, and support the local fraternity chapter's ability to avoid liability.

In summary, non-hazing activities organized by local fraternity chapters fail to establish a special relationship and accompanying duty of care between local fraternities and their injured members. The lack of control characteristic of non-hazing activities further reinforces the need to deny assertions of liability against local fraternities. Permitting injured fraternity member plaintiffs to seek redress from culpable fraternity members, rather than the local fraternity chapter, preserves rights of injured parties to seek individual justice. At the same time, disproportionate punishment of an entire local fraternity association should be discouraged. Permitting the imposition of blanket liability against local fraternities would have a chilling effect against membership and association with local chapter fraternity chapters throughout the nation.⁴⁷ State X should uphold local fraternities' immunity against non-hazing liability because the current stance preserves injured members' access to justice against individually culpable members, and aligns with the social policy goal of encouraging students' development of responsible independence necessary for adulthood.

⁴⁷ See Marshlain, *supra* note 1, at 16.

Applicant Details

First Name **Sara**
 Middle Initial **E**
 Last Name **Morrison**
 Citizenship Status **U. S. Citizen**
 Email Address sara.morrison@richmond.edu

Address
Address
Street
800 Stillwater Landing Way
City
Sneads Ferry
State/Territory
North Carolina
Zip
28460
Country
United States

Contact Phone Number **(913) 660-3339**

Applicant Education

BA/BS From **University of Kansas**
 Date of BA/BS **May 2018**
 JD/LLB From **University of Richmond School of Law**
http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf
 Date of JD/LLB **May 8, 2021**
 Class Rank **33%**
 Law Review/Journal **Yes**
 Journal(s) **University of Richmond Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Baird, Brandy
Brandy_Baird@nced.uscourts.gov

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

6730 Miami Avenue
Richmond, VA 23226

September 13, 2020

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year student at the University of Richmond School of Law and am writing to apply for a clerkship in your chambers for the 2021-2022 term. After completing two judicial internships during law school I knew that I wanted to begin my legal career as a judicial clerk in order to become a better advocate in the future.

My work experience has prepared me to be a successful candidate for this position. I will bring a proficiency in research, writing and advocacy skills. As a judicial intern with Federal Magistrate Judge Robert Jones I observed pre-trial and trial proceedings as well as multiple court-hosted mediations. From this, I learned advocacy and negotiation skills. I have had ample opportunity to hone my research and writing skills as well. During my time in Judge Jones' chambers I drafted a variety of types of documents on complex legal issues. As a judicial intern with Judge Marla Graff Decker of the Court of Appeals of Virginia I researched and wrote a comprehensive memo on criminal issues related to the COVID-19 pandemic. I have also researched and edited both academic and popular articles as a research assistant for both Professor Noah Sachs as well as Professor Corinna Lain. As a member of Richmond Law Review I have also become proficient in editing and drafting citations. I believe that each of these skill sets would be an asset in your chambers.

Enclosed please find my resume, law school transcript and a writing sample for your review. Also enclosed are letters of recommendation from Professors Noah Sachs and Corinna Lain as well as the Honorable Robert B. Jones Jr. of the United States District Court for the Eastern District of North Carolina. I would greatly appreciate the opportunity to interview with you at your convenience. Thank you for your time and consideration.

Respectfully,



Sara E. Morrison

SARA E. MORRISON

6730 Miami Avenue
Richmond, VA 23226
sara.morrison@richmond.edu
913.660.3339

EDUCATION

University of Richmond School of Law

Candidate for Juris Doctor

Richmond, VA

May 2021

- GPA: 3.54
- University of Richmond Law Review

University of Kansas

Bachelor of Science in Environmental Studies

Lawrence, KS

May 2018

- Language Institute in Eutin, Germany
- Krehbiel German Summer Language Institute Scholarship
- Zadigan Intern for Native Medicinal Plant Research Program

EXPERIENCE

University of Richmond School of Law

Research Assistant to Professor Corinna Lain

Richmond, VA

May 2020 - current

- Conducted research and drafted footnotes for an upcoming book on lethal injection

Honorable Marla Graff Decker, Court of Appeals of Virginia

Judicial Intern

Richmond, VA

June 2020 - August 2020

- Researched and drafted memoranda on criminal law issues related to COVID-19

Apex Systems

Legal Intern

Richmond, VA

August 2019 - May 2020

- Reviewed contracts for information technology staffing and services
- Composed compliance notes

Honorable Robert B. Jones Jr., U.S. District Court, Eastern District of North Carolina

Judicial Intern

Wilmington, NC

May 2019- August 2019

- Researched substantive and procedural issues
- Drafted memoranda, decisions, and orders on motions for summary judgment
- Observed and assisted during court-hosted mediations

University of Richmond School of Law

Research Assistant to Professor Noah Sachs

Richmond, VA

April 2019-November 2019

- Researched and edited journal articles relating to environmental and international law

Trinity Travel

Intern

Lenexa, Kansas

May 2015-August 2016

- Organized trips to Europe and other destinations for large groups
- Improved verbal and written communication skills through international correspondence

ADDITIONAL INFORMATION

- German language proficiency
- Member, American Bar Association

Sara Morrison
University of Richmond School of Law
Cumulative GPA: 3.54

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Clark Williams	A	4.00	
Contracts	Jim Gibson	A-	4.00	
Legal Analysis and Writing	Christopher Corts	B+	2.00	
Legal Research I	Jason Zarin	S	0	year-long course, graded in the spring
Torts	Noah Sachs	A	4.00	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Judd Campbell	B+	4.00	
Criminal Law	Hank Chambers	B+	3.00	
Legal Analysis and Writing II	Christopher Corts	B	2.00	
Legal Research II	Molly Lentz-Meyer	B-	1.00	
Legislation and Regulation	Kristen Osenga	B+	3.00	
Property	Christopher Cotropia	B+	4.00	

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Employment Law	Stephen Allred	A	3.00	
Evidence	Erin Collins	A-	4.00	
Intellectual Property Fundamentals	Jim Gibson	A-	3.00	
Land Use Planning	Carol Brown	B+	3.00	
Trial Advocacy	Judge Lynn Brice and Randy Rowlett	P	2.00	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Associations	David Epstein	P	4.00	
Contract Drafting	Hina Allauddin	P	2.00	
Corporate Compliance	Andy Spalding	P	3.00	
Independent Study	Noah Sachs	P	2.00	
Mergers and Acquisitions	Steven Haas	P	3.00	
Professional Responsibility: Criminal Practice	Bill Dinkin, Cullen Seltzer	P	2.00	

Due to disruptions caused by COVID-19 our classes were graded on a Pass/Fail basis during the Spring of 2020 semester.

Grading System Description

A+ 4.0
 A 4.0 Excellent range
 A- 3.7
 B+ 3.3
 B 3.0 Good range
 B- 2.7
 C+ 2.3
 C 2.0 Average range
 C- 1.7
 D+ 1.3
 D 1.0 Poor range
 D- 0.7
 F 0.0 Failure
 I 0.0 Punitive Incomplete (make-up grade will appear to right of "I")
 M 0.0 Withdrew Failing
 V 0.0 Failure, excessive absence
 P — Pass
 S — Satisfactory, non-academic credit
 U — Unsatisfactory, non-academic credit
 W — Withdrew Passing
 X — Grade unavailable
 Y — Non-punitive Incomplete (make-up grade will appear to right of "Y")
 Z — Audit
 TR — Transfer

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
1003 SOUTH 17TH STREET
WILMINGTON, NORTH CAROLINA 28401

ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

September 14, 2020

RE: Letter of Recommendation for Sara Morrison

To whom it may concern:

Sara served as intern in my chambers during the Summer of 2019 as a rising 2L at the University of Richmond. I am pleased to write this letter on her behalf.

Sara was enthusiastic to work on a wide number of projects during her internship. In the course of her internship Sara researched and drafted memoranda on ineffective assistance of counsel claims in a § 2255 habeas petition and the Sixth Amendment Right to Counsel, including hearings pursuant to United States v. Faretta. These are materials I continue to utilize in my criminal duty court proceedings. Sara also undertook a writing project on a novel criminal law issue regarding administrative restrictions imposed on pretrial detainees. Additionally, Sara compiled a primer on Driving While Impaired (DWI) cases prosecuted in our federal district as well as drafted a dispositive order on a social security appeal. Finally, Sarah attended numerous criminal felony pretrial proceedings, civil hearings and mediations.

My typical interaction with summer interns is daily and I did that with Sara. I would check in with her and inquire if she needed anything or had any questions. She was self-motivated and, while she asked questions, she needed little supervision to address her work. Sara approached each of these projects in a methodical and deliberate manner. She asked pointed and relevant questions during her work on these projects. I found her written work to be clear and concise and to the point. In my many discussions with her about the issues being considered, Sara appeared able to quickly understand unfamiliar concepts.

While Sara approached her intern duties in a responsible manner I also found her to be personable, oftentimes, at my instigation, discussing the merits of Kansas barbeque versus that of eastern North Carolina.

Thank you for your consideration of Sara. If you have any questions please contact me at (910) 679-2000.

Sincerely,


Robert B. Jones, Jr.

SARA E. MORRISON
6730 Miami Avenue
Richmond, VA 23226
sara.morrison@richmond.edu
913.660.3339

WRITING SAMPLE

This writing sample is an order submitted to Judge Robert Jones Jr. during my summer 2019 internship in his chambers. It is submitted with his permission. All parties' names have been changed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

JOHN SMITH,

Plaintiff/Claimant,

v.

ANDREW BROWN,
Commissioner of Social Security,

Defendant.

ORDER

This matter is before the court on the parties' cross-motions for judgment on the pleadings [DE-17, -23] pursuant to Fed. R. Civ. P. 12(c). Claimant John Smith ("Claimant") filed this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking judicial review of the denial of his application for a period of disability and Disability Insurance Benefits ("DIB"). The time for filing responsive briefs has expired, and the pending motions are ripe for adjudication. Having carefully reviewed the administrative record and the motions and memoranda submitted by the parties, Claimant's Motion for Judgment on the Pleadings is denied, Defendant's Motion for Judgment on the Pleadings is allowed, and the final decision of the Commissioner is affirmed.

I. STATEMENT OF THE CASE

Claimant protectively filed an application for a period of disability and DIB on June 29, 2016, alleging disability beginning May 2, 2015. (R. 13, 236–39). His claim was denied initially and upon reconsideration. (R. 13, 79–109). A hearing before the Administrative Law Judge ("ALJ") was held on November 30, 2017, at which Claimant, represented by counsel, and a

vocational expert (“VE”) appeared and testified. (R. 13, 31–78). On May 30, 2018, the ALJ issued a decision denying Claimant’s request for benefits. (R. 10–30). On July 19, 2018, the Appeals Council denied Claimant’s request for review. (R. 1–6). Claimant then filed a complaint in this court seeking review of the now-final administrative decision.

II. STANDARD OF REVIEW

The scope of judicial review of a final agency decision regarding disability benefits under the Social Security Act (“Act”), 42 U.S.C. § 301 *et seq.*, is limited to determining whether substantial evidence supports the Commissioner’s factual findings and whether the decision was reached through the application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987). “The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive” 42 U.S.C. § 405(g). Substantial evidence is “evidence which a reasoning mind would accept as sufficient to support a particular conclusion.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). While substantial evidence is not a “large or considerable amount of evidence,” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988), it is “more than a mere scintilla . . . and somewhat less than a preponderance.” *Laws*, 368 F.2d at 642. “In reviewing for substantial evidence, [the court should not] undertake to re-weigh conflicting evidence, make credibility determinations, or substitute [its] judgment for that of the [Commissioner].” *Mastro v. Apfel*, 270 F.3d 171, 176 (4th Cir. 2001) (quoting *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996), *superseded by regulation on other grounds*, 20 C.F.R. § 416.927(d)(2)). Rather, in conducting the “substantial evidence” inquiry, the court’s review is limited to whether the ALJ analyzed the relevant evidence and sufficiently explained his or her findings and rationale in crediting the evidence. *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439–40 (4th Cir. 1997).

III. DISABILITY EVALUATION PROCESS

The disability determination is based on a five-step sequential evaluation process as set forth in 20 C.F.R. § 404.1520 under which the ALJ is to evaluate a claim:

The claimant (1) must not be engaged in “substantial gainful activity,” i.e., currently working; and (2) must have a “severe” impairment that (3) meets or exceeds [in severity] the “listings” of specified impairments, or is otherwise incapacitating to the extent that the claimant does not possess the residual functional capacity to (4) perform . . . past work or (5) any other work.

Albright v. Comm’r of the SSA, 174 F.3d 473, 475 n.2 (4th Cir. 1999). “If an applicant’s claim fails at any step of the process, the ALJ need not advance to the subsequent steps.” *Pass v. Chater*, 65 F.3d 1200, 1203 (4th Cir. 1995) (citation omitted). The burden of proof and production during the first four steps of the inquiry rests on the claimant. *Id.* At the fifth step, the burden shifts to the ALJ to show that other work exists in the national economy which the claimant can perform. *Id.*

When assessing the severity of mental impairments, the ALJ must do so in accordance with the “special technique” described in 20 C.F.R. § 404.1520a(b)–(c). This regulatory scheme identifies four broad functional areas in which the ALJ rates the degree of functional limitation resulting from a claimant’s mental impairment(s): understanding, remembering, or applying information; interacting with others; concentrating, persisting, or maintaining pace; and adapting or managing oneself. *Id.* § 404.1520a(c)(3). The ALJ is required to incorporate into his written decision pertinent findings and conclusions based on the “special technique.” *Id.* § 404.1520a(e)(3).

In this case, Claimant alleges the following errors by the ALJ: (1) the ALJ’s decision violates *Bird* by failing to accord substantial weight to the VA disability rating; (2) the ALJ erred by failing to account for the vocationally limiting effects of Claimant’s frequent bathroom usage

in the RFC; and (3) the ALJ failed to evaluate probative evidence when assessing Claimant's social functioning. Pl.'s Mem. [DE-18] at 9–14.

IV. ALJ'S FINDINGS

Applying the above-described sequential evaluation process, the ALJ found Claimant “not disabled” as defined in the Act. At step one, the ALJ found Claimant had not engaged in substantial gainful employment since May 2, 2015. (R. 15). Next, the ALJ determined Claimant had the following severe impairments: obesity; post traumatic stress disorder (PTSD) with sleep disturbance; depressive disorder; migraine headaches; history of colon cancer; status post (s/p) bowel resection; plantar fasciitis; pes planus; s/p bilateral bunionectomies with residual symptoms; inguinal hernia; obstructive sleep apnea (OSA); degenerative disc disease (DDD) of the cervical spine; disc narrowing of the lumbar spine; and tinnitus bilaterally. *Id.* However, at step three, the ALJ concluded these impairments were not severe enough, either individually or in combination, to meet or medically equal one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. 15–17).

Prior to proceeding to step four, the ALJ assessed Claimant's RFC, finding Claimant had the ability to perform medium work,¹ specifically that Claimant can lift/carry fifty pounds occasionally and twenty-five pounds frequently; sit, stand, and walk for six hours; and push/pull as much as he can lift/carry. (R. 17–23). The ALJ also imposed the following limitations: occasional climbing; frequent stooping, kneeling, crouching, and crawling; frequent overhead reaching bilaterally; occasional exposure to atmospheric conditions, moving mechanical parts, and high, exposed places; exposure up to and including moderate noise; occasional interaction with

¹ Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying objects weighing up to 25 pounds. If someone can do medium work, he can also do sedentary and light work. 20 C.F.R. § 404.1567(c).

supervisors and coworkers, but only incidental interaction with the public, defined as one hour per day and no more than ten minutes during any one sustained period; limited to “unskilled work,” as defined in Social Security Ruling 83-10; and limited to occasional changes to the manner and method of performing the assigned work. *Id.* In making this assessment, the ALJ found Claimant’s statements about the intensity, persistence, and limiting effects of his symptoms not fully consistent with the objective medical and other evidence. (R. 18).

At step four, the ALJ concluded Claimant did not have the RFC to perform the requirements of his past relevant work. (R. 23). Nonetheless, at step five, upon considering Claimant’s age, education, work experience, and RFC, the ALJ determined Claimant is capable of adjusting to the demands of other employment opportunities that exist in significant numbers in the national economy. (R. 24).

V. DISCUSSION

A. The VA Disability Rating

Claimant contends that the ALJ erred in failing to accord substantial weight to his 100% VA disability rating. Pl.’s Mem. [DE-18] at 9–11. Specifically, Claimant asserts that the ALJ erred when he cited to “different standards” as his reason for giving less than substantial weight to the VA disability rating. Pl.’s Mem. [DE-18] at 11. The Commissioner contends that the ALJ properly considered the VA opinion because he acknowledged the 100% VA rating, explained why the ALJ’s opinion was based on a different standard, and the ALJ mentioned each impairment in the rating and assessed its impact on Claimant’s RFC. Def.’s Mem. [DE-24] at 7. The court agrees with the Commissioner that the ALJ did not err in evaluating the VA decision.

In *Bird v. Commissioner*, the Fourth Circuit noted that “both the VA and Social Security programs serve the same governmental purpose of providing benefits to persons unable to work

because of a serious disability.” 699 F.3d 337, 343 (4th Cir. 2012). “Thus, . . . in making a disability determination, the SSA must give substantial weight to a VA disability rating” unless the record clearly demonstrates that a lesser weight is appropriate. *Id.* (“[B]ecause the SSA employs its own standards for evaluating a claimant’s alleged disability . . . an ALJ may give less weight to a VA disability rating when the record before the ALJ clearly demonstrates that such a deviation is appropriate.”). Simply noting the fact that the VA and SSA employ different standards, in and of itself, is insufficient to justify deviation under *Bird*. See *Nguyen v. Colvin*, No. 5:14-CV-227-D, 2015 WL 5062241, at *7 (E.D.N.C. Aug. 10, 2015) (“[T]he reasons cited by the Commissioner—different rules and different standards—would apply to every case and thus cannot be relied upon to avoid scrutiny of the [agency’s] decision under *Bird*’s new presumptive standard.”), *adopted by* 2015 WL 5089060 (E.D.N.C. Aug. 27, 2015).

Here, the ALJ begins by explaining the difference between the VA and SSA standards:

The seminal difference between the disability adjudication process in the VA system and the SSA’s determination of disability is the SSA focus on functional capacity and functional limitations from impairments. Whereas the VA assigns percentages of disability from a published chart, without consideration of the impact of the rated component impairment on the claimant’s ability to perform basic work tasks, SSA focuses directly upon such functional limitations and their impact on the ability to perform past work, as well as other jobs existing in the national economy.

(R. 22). However, the ALJ goes beyond simply noting the fact that the VA and SSA employ different standards. Throughout his RFC discussion, the ALJ notes each impairment in the rating and assesses its impact on the RFC, making his own evaluation based on the standards of the SSA. It is from his assessment of the evidence and the effect of each impairment on the RFC that he bases his determination that deviation was appropriate.

The ALJ discussed the evidence relating to Claimant’s 30% chronic diarrhea rating. In

2012, Claimant had colon cancer and had 80% of his bowel removed. (R. 19, 493). Medical records from both April 2016 and April 2017 indicate that his cancer was in remission. (R. 19, 694). Claimant testified that he was cancer free. (R. 19, 45). Claimant stated that he has gastrointestinal problems, and that he has to use the bathroom within minutes of eating, but that he does not wear protective garments. (R. 18, 53–54). In March 2016 Dr. McDonald, M.D. noted that Claimant complained of loose stools daily from having his colon removed for malignancy. (R. 19, 2042).

The ALJ also discussed the evidence relating to Claimant's 70% PTSD rating. The Claimant stated he had PTSD and depression. (R. 18, 48–51). Claimant also stated that he has anxiety but that his medication helps. *Id.* Claimant attended prolonged exposure therapy, which he said helped with both his PTSD and coping skills. *Id.* He is able to maintain his household, is the sole provider for his school-age daughter, is independent in his self-care needs, and is able to drive. (R. 19, 31–78). He works out at home regularly. *Id.* He does yardwork and mows. *Id.* He stated that his medication helps when he takes it. *Id.*

In March 2015, Dr. McDonald, M.D. noted that Claimant was diagnosed with PTSD in 2014. (R. 19, 2042). In February 2016, Dr. Brandon, Ph.D., and David Johnson, M.A., conducted a psychological consultative evaluation. (R. 20, 2021–30). Claimant's mental status exam showed him to be active and responsive. *Id.* His reality was intact, and his speech rate was normal, but his eye contact was limited. *Id.* He reported feeling anxious and depressed and that he experienced nightmares and flashbacks from his combat experience while in the military. *Id.* He also reported that he felt numb, detached, and irritable and that he often experienced mood swings. *Id.* Claimant reported that he avoided doing things or going places that reminded him of his past. *Id.* However, he denied doing things that got him into trouble or ever having suicidal or homicidal thoughts. *Id.*

Dr. Brandon noted that his affect was appropriate to content and conversational shifts. *Id.* She also noted that the claimant appeared to be capable of understanding instructions adequately to perform simple, routine, and repetitive tasks, and that he showed fairly good social skills. *Id.* He was able to interact appropriately with others including peers, coworkers, and supervisors, although he was withdrawn and did have trust issues. *Id.*

Dr. Burge, Psy.D., and Ashley Watkins, M.A., performed a psychological consultative evaluation in December 2016. (R. 20, 502–06). Claimant reported that his mood was empty and that he had crying spells but denied homicidal or suicidal thoughts. (R. 21, 502–06). He reported visual hallucinations. *Id.* However, his thought process was clear and logical, and he was oriented to person, time, place, and situation. *Id.* His remote memory was adequate. *Id.* He acknowledged his need for mental health treatment. *Id.* Dr. Burge diagnosed him with PTSD and noted that he appeared to be able to sustain attention to perform simple repetitive tasks, but that he would have difficulty in relating to fellow workers and supervisors. *Id.* He would also be limited in his ability to handle the stress of day-to-day work. *Id.* In January 2017, VAMC treatment notes indicated that Claimant’s main complaint was that he had PTSD including aggression, depression, anxiety, nightmares, and hypertension. (R. 21, 792). However, Claimant reported that he was not hallucinating and had no problems carrying out daily activities such as performing housework, preparing meals, transportation, and managing his medications and finances. (R. 21, 520).

The ALJ extensively discussed the evidence pertaining to Claimant’s 100% VA disability rating, and it is not the court’s role to re-weigh evidence. *Mastro*, 270 F.3d at 176 (citing *Craig*, 76 F.3d at 589). Regarding Claimant’s 30% rating for chronic diarrhea, he noted that the evidence shows no recurrence, and Claimant does not wear protective garments, take medication, or experience bowel or bladder incontinence. (R. 22, 193–235). Regarding Claimant’s 70% rating

for PTSD, the ALJ noted that Claimant is capable of performing a wide range of daily activities and that despite his mental impairments he is able to perform simple unskilled work. (R. 22). He notes that this assessment is supported by the psychological consultative evaluations. (R. 23).

The VA rating itself also supports the ALJ's finding that Claimant could perform work with limitations. On September 9, 2015, Mr. Smith was assigned a 100% VA disability rating based in part on his 70% rating for PTSD and 30% rating for chronic diarrhea. (R. 197, 209). His PTSD rating is due to his difficulty adapting to work or to stressful circumstances, impaired impulse control, "unprovoked irritability with periods of violence," disturbances of motivation and mood, "difficulty in establishing and maintaining effective work and social relationships," depressed mood, chronic sleep impairment, anxiety, suspiciousness, and "occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care and conversation normal)." (R. 197). Claimant's PTSD rating was 70% rather than 100% because the VA noted that the evidence did not show total occupational and social impairment, suggesting that work could be done with accommodation. *Id.* The VA rating is consistent with the ALJ's finding. The ALJ imposed restrictive conditions in the RFC to account for Claimant's PTSD, with a limitation to occasional interaction with supervisors and coworkers, and only incidental interaction with the public, defined as one hour per day and no more than ten minutes during one sustained period. (R. 18). His 30% chronic diarrhea rating is due to his diarrhea and frequent episodes of bowel disturbance and distress. (R. 209). However, the 30% VA rating indicated that his condition was expected to improve. *Id.*

Here, the ALJ's discussion, read as a whole, demonstrates that deviation was appropriate, and thus the ALJ's decision did not violate *Bird*. The ALJ discusses the relevant evidence

regarding Claimant's 70% PTSD rating and 30% chronic diarrhea rating, and sufficiently explained why they did not preclude Claimant from performing work with limitations. Thus, the ALJ's decision not to give substantial weight to the VA disability rating is supported by substantial evidence. *See Ellison v. Berryhill*, No. 7:17-CV-156-RJ, 2018 WL 3618371, at *4, (E.D.N.C. July 30, 2018) (finding no error in the ALJ's evaluation of the VA disability rating, where the ALJ sufficiently explained his reasoning for deviating from the VA disability rating because the ALJ's decision read as a whole contained substantial evidence supporting deviation).

B. The limiting effects of Claimant's frequent bathroom usage in the RFC.

Claimant contends that the ALJ erred by failing to account for the vocationally limiting effects of Claimant's frequent bathroom usage in the RFC. Pl.'s Mem. [DE-18] at 12–13. Claimant argues that his frequent bathroom usage due to his loose stools and diarrhea would take him away from his work station often. *Id.* This is based on Claimant's testimony during his hearing that he must use the restroom within minutes of eating and that before his hearing he had already used the restroom four times that day. *Id.* The VE testified that if Claimant were off task for more than 13% of the time he would be unemployable. (R. 76). From this Claimant concludes that the ALJ did not properly include an accommodation for his frequent bathroom usage in the RFC, because it could take him off task for more than 13% of the workday. Pl.'s Mem. [DE-18] at 12–13. The Commissioner contends that the ALJ properly gave no weight to Claimant's allegations about a need for constant bathroom breaks. Def.'s Mem. [DE-24] at 10. The court agrees with the Commissioner.

An individual's RFC is the capacity he possesses despite the limitations caused by physical or mental impairments. 20 C.F.R. § 404.1545(a)(1); *see also* S.S.R. 96-8p, 1996 WL 374184, at *1 (July 2, 1996); *see Brown v. Comm'r Soc. Sec. Admin.*, 873 F.3d 251, 254 (4th Cir. 2017)

(defining the RFC as “the most [the claimant] can still do despite [his] physical and mental limitations”). “[T]he residual functional capacity ‘assessment must first identify the individual’s functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions’ listed in the regulations.” *Mascio v. Colvin*, 780 F.3d 632, 636 (4th Cir. 2015) (quoting S.S.R. 96–8p). The RFC is based on all relevant medical and other evidence in the record and may include a claimant’s own description of limitations arising from alleged symptoms. 20 C.F.R. § 404.1545(a)(3); *see also* S.S.R. 96–8p, 1996 WL 374184, at *5.

Where a claimant has numerous impairments, including non-severe impairments, the ALJ must consider their cumulative effect in making a disability determination. 42 U.S.C. § 423(d)(2)(B); *see Hines v. Brown*, 872 F.2d 56, 59 (4th Cir. 1989) (“[I]n determining whether an individual’s impairments are of sufficient severity to prohibit basic work-related activities, an ALJ must consider the combined effect of a claimant’s impairments.”) (citations omitted). The ALJ has sufficiently considered the combined effects of a claimant’s impairments when each is separately discussed along with a claimant’s complaints and activities. *Baldwin v. Barnhart*, 444 F. Supp. 2d 457, 465 (E.D.N.C. 2005) (citations omitted).

The RFC assessment “must include a discussion of why reported symptom-related functional limitations and restrictions can or cannot reasonably be accepted as consistent with the medical and other evidence,” as well as a “narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily activities, observations).” *Id.*; *see also Clifford v. Apfel*, 227 F.3d 863, 872 (7th Cir. 2000) (observing that the ALJ “must build an accurate and logical bridge from the evidence to his conclusion”).

The ALJ discussed the evidence relating to Claimant’s gastrointestinal problems. In 2012,

Claimant had colon cancer and had 80% of his bowel removed. (R. 19, 493). Medical records from both April 2016 and April 2017 indicate that his cancer was in remission. (R. 19, 694). Claimant testified that he was cancer free. (R. 19, 45). Claimant stated that he has gastrointestinal problems, and that he has to use the bathroom within minutes of eating, but that he does not wear protective garments. (R. 18, 53–54). In March 2016, Dr. McDonald, M.D. noted that Claimant complained of loose stools daily from having his colon removed for malignancy. (R. 19, 2042).

The ALJ concluded that “his impairments are likely to produce some of the functional limitations that he speaks of, but not to the extent that he is unable to satisfy the demands of regular work activity on a sustained basis.” (R. 23). The ALJ draws this conclusion from the fact that Claimant’s medical record indicates that his colon cancer is in remission. (R. 19, 694). The ALJ acknowledged that Claimant has complained of loose stools to his physicians and claims he must use the bathroom within minutes of eating. However, the ALJ discussed the evidence regarding Claimant’s colon cancer remission, as well as the fact that Claimant does not wear protective garments, does not take medication, and does not experience bowel or bladder incontinence. (R. 18, 193–235). Thus, the ALJ drew an accurate and logical bridge from the evidence to his conclusion. *Monroe v. Colvin*, 826 F.3d 176, 188 (4th Cir. 2016). It is not the role of the court to re-weigh the evidence. *Mastro*, 270 F.3d at 176. Therefore, the ALJ did not err in his consideration of the effect of Claimant’s frequent bathroom usage in the RFC.

C. Claimant’s Social Functioning

Claimant contends that the ALJ failed to evaluate probative evidence when assessing Claimant’s social functioning. Pl.’s Mem. [DE–18] at 13–14. The Commissioner argues that the ALJ properly evaluated Claimant’s social functioning, and the ALJ’s conclusions are supported by the 70% PTSD disability rating, and the medical evidence. Def.’s Mem. [DE-24] at 12–13. The

court agrees with the Commissioner.

While it is not the province of this court to weigh the evidence considered by the ALJ, the court must consider whether the ALJ considered and analyzed all the relevant evidence. *See Sterling Smokeless Coal Co.*, 131 F.3d at 439–40. The ALJ may not select and discuss only that evidence that favors her ultimate conclusion. *See Lewis v. Berryhill*, 858 F.3d 858, 869 (4th Cir. 2017) (noting that the ALJ is obliged to consider all relevant medical evidence and cannot “cherry-pick” facts supporting non-disability while ignoring contrary evidence); *Loza v. Apfel*, 219 F.3d 378, 393 (5th Cir. 2000) (explaining the ALJ cannot pick and choose only the evidence that supports his position); *Clifton v. Chater*, 79 F.3d 1007, 1010 (10th Cir. 1996) (In addition to discussing the evidence supporting his decision in a social security disability benefits case, the ALJ must discuss the uncontroverted evidence he chooses not to rely upon, as well as significantly probative evidence he rejects.).

The ALJ extensively discusses the evidence regarding Claimant’s social functioning. He acknowledged that Claimant was diagnosed with PTSD in 2014. (R. 19, 2040). He discussed a February 2016 psychological consultative evaluation (“CE”) by Dr. Brandon, Ph. D., and David Johnson, M.A., during which Claimant’s mental status exam showed that he was active and responsive, his reality contact was intact, and his speech rate was normal. (R. 20, 2026–30). He reported being depressed and anxious, experiencing flashbacks and some nightmares related to his combat experience while in the military. *Id.* He reported that he avoided doing things or going places that reminded him of his past and that he felt numb and detached towards things going on around him. *Id.* He also reported mood swings and irritability but denied doing things that got him into trouble. *Id.* However, Dr. Brandon assessed that Claimant demonstrated fairly good social skills and the ability to interact appropriately with others including peers, coworkers, and

supervisors, but that he was withdrawn socially and had some trust issues. *Id.* She recommended mental health services including psychiatric treatment and counseling. *Id.*

In December 2016, Claimant underwent another psychological CE by Dr. Burge, Psy.D., and Ashley Watkins, M.A., which revealed that he was cooperative and polite, and his speech was clear, coherent, and normal in rate in volume. (R. 20, 502–06). Claimant reported that his mood felt empty, and that he experienced crying spells, but again denied suicidal or homicidal thoughts. (R. 20–21, 502–06). Dr. Burge assessed that Claimant was able to sustain attention to perform simple repetitive tasks but that he would likely have difficulty relating to fellow workers and supervisors. Further, Claimant’s ability to tolerate stress associated with day-to-day work activity would probably be limited. (R. 21, 502–06)

In January of 2017, Claimant reported aggression, depression, anxiety, nightmares, and hypertension but that he did not need help supervising his daily activities and had no trouble preparing meals, performing housework, driving, or managing his medications or his finances. (R. 21, 785–842). In September 2018, Claimant’s treatment notes state that he was alert and oriented times four, his appearance was neat and casual, and he made appropriate eye contact during the entire session. *Id.* Claimant’s speech rate, volume, and prosody were normal, and his thought process was relevant and goal oriented. *Id.* He neither displayed or reported psychotic symptoms, delusional content, or homicidal or suicidal ideations. *Id.* Again, Claimant reported that he did not need any help with basic daily activities. *Id.*

Based on the evidence, the ALJ concluded that despite his mental impairments Claimant is able to perform simple unskilled work. (R. 23). The ALJ also included the limitations of only occasional interaction with supervisors and coworkers; only incidental interaction with the public, defined as one hour per day and no more than ten minutes during any one sustained period; and

limited to occasional changes in the manner and method of performing the assigned work. (R. 17–18).

The ALJ explained that his determination was made based on the fact that Claimant is able to perform a wide range of activities of daily living, including maintaining a household as a single parent, cooking, cleaning, doing yardwork, grocery shopping, and driving. (R. 23, 31–78). Further, Claimant testified that his medication and counseling have helped and that he now attends counseling only once every two months. (R. 23, 51). The ALJ also made this determination based on the consultative examinations of Dr. Brandon who concluded that while Claimant was withdrawn socially and had some trust issues, he demonstrated fairly good social skills and the ability to interact appropriately with others including peers, coworkers, and supervisors, and Dr. Burge, who concluded that Claimant was able to sustain attention to perform simple repetitive tasks. (R. 22, 2020–30, 502–07). The ALJ explained that he found Dr. Brandon’s and Dr. Burge’s assessments highly persuasive because both are consistent with the objective medical evidence and the record as a whole, including Claimant’s daily activities. (R. 22). Thus, there is substantial evidence to support the ALJ’s determination, and the ALJ did not fail to evaluate probative evidence when assessing Plaintiff’s social functioning.

VI. CONCLUSION

For the reasons stated above, Claimant’s Motion for Judgment on the Pleadings [DE-17] is DENIED, Defendant’s Motion for Judgment on the Pleadings [DE-23] is ALLOWED and the final decision of the Commissioner is affirmed.

So ordered, this the 24th day of July, 2019.

Applicant Details

First Name **Ian**
 Last Name **Murray**
 Citizenship Status **U. S. Citizen**
 Email Address imurray@umaryland.edu
 Address

Address
Street
2311 25th St. S #204
City
Arlington
State/Territory
Virginia
Zip
22206
Country
United States

Contact Phone Number **3042035523**

Applicant Education

BA/BS From **West Virginia University**
 Date of BA/BS **May 2014**
 JD/LLB From **University of Maryland Francis King Carey School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=52102&yr=2011
 Date of JD/LLB **May 15, 2022**
 Class Rank **20%**
 Law Review/Journal **Yes**
 Journal(s) **Maryland Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Professional Organization

Organizations **American Bar Association**
 Federal Communications Bar Association
 American Chemical Society

Recommenders

Moon, William
wmoon@law.umaryland.edu
4107067214
Ram, Natalie
nram@law.umaryland.edu
410 706 7214
Van Alstine, Michael
mvanalstine@law.umaryland.edu
(410) 706-1055

References

Professor William Moon
Email: wmoon@law.umaryland.edu
Telephone: (203) 392-4466 (cell)

Professor Michael P. Van Alstine
Email: mvanalstine@law.umaryland.edu
Telephone: (410) 706-1055

Professor Natalie Ram

Email: nram@law.umaryland.edu

Telephone: (410) 706-5241

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Ian James Murray

(304) 203-5523 | 2311 25th St. S #204, Arlington, VA 22206 | imurray@umaryland.edu

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 E Broad Street
Richmond, VA 23219

June 14, 2021

Dear Judge Hanes:

I am currently a rising third-year student at the University of Maryland Francis King Carey School of Law and am writing to apply for the 2022–2024 term. Clerking in your chambers represents a unique opportunity to learn and be immersed in the foundations of the judicial system. I would be honored to learn, work, and be mentored by someone with your knowledge and experience.

I am confident that I am qualified to become a judicial law clerk and add significant value to your chambers. As you will see from my enclosed transcript and resume, I have extensive research and writing experience across varying domains of knowledge. Prior to law school, I earned a master's degree in analytical chemistry and worked for trade associations in the food additive space. In these positions, I published work in peer-reviewed journals covering various topics, from novel mass spectrometry techniques to biological safety assessments on various flavor and food additives, particularly on natural flavor complexes (e.g., cinnamon, lavender). Both positions required me to critically analyze and distill large bodies of information into meaningful conclusions. Moreover, these positions required me to work independently to meet several concurrent deadlines.

Additionally, I am a member of the *Maryland Law Review*. This prior academic year, I researched and wrote an article slated for publication in the *Maryland Law Review Volume 80*. Additionally, my journal colleagues have selected me as the Executive Symposium/Articles Editor for Volume 81, in which I will be responsible for independently developing and orchestrating a *Maryland Law Review*-sponsored symposium, as well as editing associated publication pieces. These experiences, along with the substantial time spent researching and editing other staff members' and lead authors' law review articles, have tremendously honed my legal research and writing skills. I look forward to bringing these skills to work for you.

I am submitting my resume, unofficial transcript, writing sample, and letters of recommendation with this application. I welcome the opportunity to interview with you and look forward to hearing from you soon. Please contact me if I can provide further information or materials.

Thank you for your time and consideration.

Respectfully,



Ian Murray

Ian James Murray

(304) 203-5523 | 2311 25th St. S #204, Arlington, VA 22206 | imurray@umaryland.edu

Education

University of Maryland Francis King Carey School of Law, Baltimore, MD

Juris Doctor Candidate, Expected May 2022

IP Law Track; Business Law Track

GPA: 3.67 – Rank: 35/189

Maryland Law Review, Executive Symposium & Articles Editor, Vol. 81; Staff Editor, Vol. 80

Leadership Scholar; President's Student Leadership Institute (Effective Leadership); CALI Award, Legal Writing; Food Law Society; FCBA Diversity Pipeline Program Student Ambassador

North Carolina State University, Raleigh, NC

Master of Science in Chemistry and Graduate Minor in Biotechnology, May 2016

GPA: 3.78

Thesis: *Investigation of using Paper Microfluidic Techniques as a means of Improving Paper Spray Mass Spectrometry's Analytical Capabilities*

West Virginia University, Morgantown, WV

Bachelor of Science in Chemistry and Minor in History, May 2014

GPA: 3.62, *Magna Cum Laude*

Awards: University Honors Scholar; West Virginia Engineering, Science, and Technology Scholar

Publications

Ian J. Murray, Note, *Hughes v. Hu: Territorial Adjustments in Determining Caremark Liability for Foreign-Based Delaware Incorporated Companies*, 80 MD. L. REV. (forthcoming Aug. 2021).

Nigel J. Gooderham et al., *FEMA GRAS assessment of natural flavor complexes: Clove, Cinnamon leaf and West Indian bay leaf-derived flavoring ingredients*, 145 FOOD & CHEM. TOXICOLOGY 111585 (2020) (listed as a contributing author).

Ivonne M.C.M. Rietjens et al., *FEMA GRAS assessment of natural flavor complexes: Cinnamomum and Myroxylon-derived flavoring ingredients*, 135 FOOD & CHEM. TOXICOLOGY 110949 (2020) (listed as a contributing author).

CHRISTIE L. HARMAN & IAN J. MURRAY, 2015 POUNDAGE AND TECHNICAL EFFECTS SURVEY. FLAVOR AND EXTRACT MANUFACTURERS ASSOCIATION OF THE UNITED STATES (2018).

Ian Murray et al., *Investigating Paper-based Microfluidic Techniques coupled to Paper Spray Mass Spectrometry*, 141 ANALYST 4065 (2016).

Experience

Keller and Heckman LLP, Washington, DC

Summer Associate

May 2021-Present

Wireless Internet Service Providers Association, Washington, DC

Policy Fellow

June 2020-August 2020

- Drafted technical guidance memos for member companies regarding recent FCC orders.
- Drafted advocacy materials for Congress and the FCC.
- Prepared FCC pleadings in cooperation with senior policy staff.

Verto Solutions, Washington, DC

Scientific Associate

July 2016-August 2019

- Researched science, policy, and regulations for client and trade association members.
- Drafted safety assessments and other documents for various national and international regulatory bodies.
- Wrote confidential correspondence, documents, and presentations for corporate clients and trade associations.

Golds Gyms in Northern Virginia

Group Exercise Instructor

August 2018-Present

- Lead multiple cycle and core-intensive group exercise classes weekly.
- Certified in two Les Mills group fitness formats. Achieved advanced instructor status in one.

North Carolina State University, Raleigh, NC

Graduate Research Assistant

October 2014-June 2016

- Researched a novel interdisciplinary area regarding the use of paper microfluidics to increase paper spray mass spectrometry's analytical capabilities.
- Invented a paper-based device capable of increased pesticide detection.
- Assisted in ongoing research in statistical process control and integration of new quality control metrics.

North Carolina State University, Raleigh, NC

Graduate Teaching Assistant

August 2014-June 2016

- Led a total of nine supplemental problem sessions in conjunction with various introductory chemistry professors.
- Led four classes of twenty students through introductory chemistry lab. Held weekly independent sessions for struggling students.

Volunteer Experience

Arlington Food Assistance Center

2016-Present

Mountaineer Alumni Association

Capital Area Chapter: 2016-Present
Triangle Chapter: 2014-2016

Habitat for Humanity

Various Chapters: 2012-Present

Professional Affiliations

American Bar Association

Student Member: Present

Federal Communications Bar Association

Student Member: Present

American Chemical Society

Student Member: 2011-2016
Professional Member: 2016-Present

Display Transcript



This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Note: In your SURFS record, you may see an I or an E in the Repeat column to the far right of the record. These notations are used in our database to denote Include or Exclude courses in your GPA calculation. Because SURFS is a direct reflection of the live database, we can not remove these notations from SURFS.

Please be aware that I in the SURFS Repeat column will not be printed on your transcript. I is used as a grade that will appear only to denote an Incomplete for a course. Similarly, E will not appear on your transcript either. Courses that are being excluded from your GPA will be marked with an R in the Repeat column on your transcript.

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

Transcript Data

STUDENT INFORMATION

Name : Ian J. Murray

Curriculum Information

Current Program

Juris Doctor

Program: Law Day

Major and Department: Law, Law

Major Concentration: Law Cardin Required

This is NOT an Official Transcript

DEGREES AWARDED

In Progress: Juris Doctor Degree Date:

Curriculum Information

Primary Degree

Major: Law

Major Concentration: Law Cardin Required

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2019

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	506A	LW	CRIMINAL LAW	A-	3.000	11.01		
LAW	527A	LW	CIVIL PROCEDURE	B+	4.000	13.32		
LAW	531A	LW	LEGAL ANALYSIS AND WRITING	A	3.000	12.00		
LAW	535A	LW	TORTS	B	4.000	12.00		
LAW	554A	LW	INTRO TO CONTRACTS	B+	2.000	6.66		

Term Totals (School of Law)

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1/3

6/2/2021

Academic Transcript

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	54.99	3.44
Cumulative:	16.000	16.000	16.000	16.000	54.99	3.44

Unofficial Transcript

Term: Spring 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	528A	LW	CON LAW I: GOVERNANCE	P	3.000	0.00		
LAW	534A	LW	PROPERTY	P	4.000	0.00		
LAW	550A	LW	INTRODUCTION TO LEGAL RESEARCH	A	1.000	4.00		
LAW	551A	LW	WRITTEN AND ORAL ADVOCACY	P	2.000	0.00		
LAW	558A	LW	CONTRACTS II	P	3.000	0.00		
LAW	597S	LW	FOUNDATIONS IN BUSINESS LAW	P	3.000	0.00		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	1.000	4.00	4.00
Cumulative:	32.000	32.000	32.000	17.000	58.99	3.47

Unofficial Transcript

Term: Summer 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	509S	LW	FIN & ACCT BASICS FOR LAWYERS	P	2.000	0.00		
LAW	553M	LW	SPECIAL TOPIC: LEGAL CAPITAL	A	1.000	4.00		
LAW	558H	LW	LEGAL PROFESSION	B+	3.000	9.99		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	6.000	6.000	6.000	4.000	13.99	3.50
Cumulative:	38.000	38.000	38.000	21.000	72.98	3.48

Unofficial Transcript

Term: Fall 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	519H	LW	COMMERCIAL LAW: SECURED TRANS	A-	3.000	11.01		
LAW	529A	LW	CON LAW II: INDIVIDUAL RIGHTS	A-	3.000	11.01		
LAW	531C	LW	MARYLAND LAW REVIEW	CR	1.000	0.00		I
LAW	565G	LW	TRADEMARKS & UNFAIR COMPETITION	B+	3.000	9.99		
LAW	572C	LW	BUSINESS ASSOCIATIONS	A	3.000	12.00		
LAW	598B	LW	INTELLECTUAL PROP LAW SURVEY	A-	3.000	11.01		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
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6/2/2021

Academic Transcript

Current Term:	16.000	16.000	16.000	15.000	55.02	3.67
Cumulative:	54.000	54.000	54.000	36.000	128.00	3.56

Unofficial Transcript

Term: Spring 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	501S	LW	ADV BIOETHICS & THE LAW SEM/CRS	A	3.000	12.00		
LAW	513Q	LW	ADV LEG RES:HLTH(DISTANCE EDU)	A	1.000	4.00		
LAW	531C	LW	MARYLAND LAW REVIEW	CR	1.000	0.00		I
LAW	537B	LW	COPYRIGHT LAW	A+	3.000	12.99		
LAW	538G	LW	PATENT LAW	A	3.000	12.00		
LAW	596F	LW	INCOME TAXATION	A-	3.000	11.01		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	13.000	52.00	4.00
Cumulative:	68.000	68.000	68.000	49.000	180.00	3.67

Unofficial Transcript

TRANSCRIPT TOTALS (SCHOOL OF LAW) [Top](#)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	68.000	68.000	68.000	49.000	180.00	3.67
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	68.000	68.000	68.000	49.000	180.00	3.67

Unofficial Transcript

COURSES IN PROGRESS [-Top-](#)

Term: Fall 2021

Subject	Course	Level	Title	Credit Hours	Start and End Dates
LAW	501F	LW	ADMINISTRATIVE LAW	3.000	
LAW	520B	LW	BUSINESS PLANNING SEMINAR	3.000	
LAW	526U	LW	IP ENTRE CLINIC BUSINESS	5.000	
LAW	531C	LW	MARYLAND LAW REVIEW	3.000	
LAW	586B	LW	HLS FOOD & DRUG LAW	3.000	

Unofficial Transcript

[Web Accessibility](#)


RELEASE: 8.7.1

9/1/2017

Academic Transcript

Display Transcript

 Ian J. Murray
 Sep 01, 2017 04:37 pm

 This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Transfer Credit Institution Credit Transcript Totals



Transcript Data

STUDENT INFORMATION

Name 1 Ian J. Murray

Curriculum Information

Current Program

This is NOT an Official Transcript

DEGREES AWARDED

Degree Bachelor of Science Degree Date: May 11, 2014

Awarded: Institutional Magna Cum Laude, University Honors Scholar

Curriculum Information

Primary Degree

College: Arts and Sciences
 Major: Chemistry
 Minor: History

TRANSFER CREDIT ACCEPTED BY INSTITUTION -Top-

Prior to WVU: Advanced Placement CEEB

Subject	Course	Title	Grade	Credit Hours	Quality Points	R
CHEM	115	Fundamentals of Chemistry	CR	4.000	0.00	
CHEM	116	Fundamentals of Chemistry	CR	4.000	0.00	
ENGL	101	Composition And Rhetoric	CR	3.000	0.00	
ENGL	131	Poetry and Drama	CR	3.000	0.00	
			Attempt Hours	Passed Hours	Earned GPA Hours	Quality GPA Points
Current Term:			14.000	14.000	0.000	0.00

Unofficial Transcript

INSTITUTION CREDIT -Top-

Term: Fall 2008

Academic Standing:

Subject	Course	Level Title	Grade	Credit	Quality	R
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9/1/2017

Academic Transcript

						Hours	Points
MATH	126C	UG	College Algebra 3-Day	A-		3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	3.000	3.000	3.000	3.000	12.00	4.00
Cumulative:	3.000	3.000	3.000	3.000	12.00	4.00

Unofficial Transcript

Term: Spring 2009

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
MATH	128	UG	Plane Trigonometry	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	3.000	3.000	3.000	3.000	12.00	4.00
Cumulative:	6.000	6.000	6.000	6.000	24.00	4.00

Unofficial Transcript

Term: Fall 2010

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIOL	115	UG	Principles Of Biology	A	4.000	16.00
CHEM	117	UG	Principles of Chemistry	B	5.000	15.00
EDP	293	UG	SPTP:Math/Sci Strtgs-Acd Socss	A+	3.000	12.00
HONR	199	H UG	Orientation to Honors	A	1.000	4.00
HONR	2930	H UG	SPTP:Community Organization	A	1.000	4.00
			ORIGINAL GRADE INCOMPLETE (I)			
MATH	155	UG	Calculus 1	B	4.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	18.000	18.000	18.000	18.000	63.00	3.50
Cumulative:	24.000	24.000	24.000	24.000	87.00	3.62

Unofficial Transcript

Term: Spring 2011

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
CHEM	118	UG	Principles of Chemistry	A-	5.000	20.00
CLAS	232	UG	Greek And Roman Myths	A	3.000	12.00
MATH	156	UG	Calculus 2	B+	4.000	12.00
PE	164	UG	Weight Training	A+	1.000	4.00
PHYS	111	UG	General Physics	A	4.000	16.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	17.000	17.000	17.000	17.000	64.00	3.76
Cumulative:	41.000	41.000	41.000	41.000	151.00	3.68

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2/5

9/1/2017

Academic Transcript

Unofficial Transcript

Term: Summer Session 2011

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
HIST	153	UG	Making Modern America: 1865-Present	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	3.000	3.000	3.000	3.000	12.00	4.00
Cumulative:	44.000	44.000	44.000	44.000	163.00	3.70

Unofficial Transcript

Term: Fall 2011

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
CHEM	233	UG	Organic Chemistry	B	3.000	9.00
CHEM	235	UG	Organic Chemistry Laboratory	A	1.000	4.00
CHEM	490B	UG	Teaching Practicum - TA	A	1.000	4.00
HIST	152	UG	Growth-American Nation to 1865	A	3.000	12.00
PHIL	100	H UG	Problems of Philosophy	A-	3.000	12.00
PHYS	112	UG	General Physics	A-	4.000	16.00
SPAN	101	UG	Elementary Spanish 1	B	3.000	9.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	18.000	18.000	18.000	18.000	66.00	3.66
Cumulative:	62.000	62.000	62.000	62.000	229.00	3.69

Unofficial Transcript

Term: Spring 2012

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIOL	117	UG	Introductory Physiology	B	4.000	12.00
CHEM	234	UG	Organic Chemistry	A	3.000	12.00
CHEM	236	UG	Organic Chemistry Laboratory	A	1.000	4.00
CHEM	497	UG	Research	A	2.000	8.00
HIST	464	UG	American Foreign Relations 1941-Present	A	3.000	12.00
MATH	251	UG	Multivariable Calculus	B-	4.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	17.000	17.000	17.000	17.000	60.00	3.52
Cumulative:	79.000	79.000	79.000	79.000	289.00	3.65

Unofficial Transcript

Term: Summer Session 2012

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
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3/5

9/1/2017

Academic Transcript

COMM	105	UG	Introduction to the Mass Media	B	3.000	9.00
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Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	3.000	3.000	3.000	3.000	9.00	3.00
Cumulative:	82.000	82.000	82.000	82.000	298.00	3.63

Unofficial Transcript

Term: Fall 2012

Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
AGBI	410	UG	Introduction to Biochemistry	B	3.000	9.00
BIOL	219	UG	The Living Cell	B	4.000	12.00
CHEM	335	UG	Method:Structure Determination	B+	4.000	12.00
CHEM	346	UG	Physical Chemistry	A	3.000	12.00
HONR	210	H UG	City-As-Text-Morgantown	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	17.000	17.000	17.000	17.000	57.00	3.35
Cumulative:	99.000	99.000	99.000	99.000	355.00	3.58

Unofficial Transcript

Term: Spring 2013

Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
CHEM	310	UG	Instrumental Analysis	B	3.000	9.00
CHEM	312	UG	Environmental Chemistry	B-	3.000	9.00
CHEM	347	UG	Physical Chem Lab	A	1.000	4.00
CHEM	348	UG	Physical Chemistry	B	3.000	9.00
ENGL	102	UG	Composition And Rhetoric	A	3.000	12.00
RPTR	251	UG	Leadership-Experiential Educ	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
Current Term:	16.000	16.000	16.000	16.000	55.00	3.43
Cumulative:	115.000	115.000	115.000	115.000	410.00	3.56

Unofficial Transcript

Term: Fall 2013

Academic Standing: Good Standing

Additional Standing: Dean's List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
CHEM	313	UG	Instrumental Analysis Lab	A	1.000	4.00
CHEM	349	W UG	Physical Chemistry Laboratory	A	2.000	8.00
CHEM	401	UG	Chemical Literature	A-	1.000	4.00
CHEM	422	UG	Intermediate Inorganic Chem	B	3.000	9.00
HIST	432	UG	18th Century Britain 1715-1832	A	3.000	12.00
RELG	102	UG	Introduction-World Religions	A	3.000	12.00
SOCA	105	UG	Introduction to Anthropology	A	3.000	12.00

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9/1/2017

Academic Transcript

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	61.00	3.81
Cumulative:	131.000	131.000	131.000	131.000	471.00	3.59

Unofficial Transcript

Term: Spring 2014

Academic Standing: Good Standing**Additional Standing:** President's List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
ASTR	106	UG	Descriptive Astronomy	A+	3.000	12.00
CHEM	403	UG	Undergraduate Seminar	A	1.000	4.00
CHEM	423	UG	Inorganic Synthesis Laboratory	A-	2.000	8.00
CHEM	521	UG	Organometallic Chemistry	X	3.000	0.00
HIST	459	UG	US Hist::New Deal-Great Society	A	3.000	12.00
RPTR	325	UG	Challenge Course Facilitation	A+	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	12.000	12.000	12.000	48.00	4.00
Cumulative:	146.000	143.000	143.000	143.000	519.00	3.62

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	146.000	143.000	143.000	143.000	519.00	3.62
Total Transfer:	14.000	14.000	14.000	0.000	0.00	0.00
Overall:	160.000	157.000	157.000	143.000	519.00	3.62

Unofficial Transcript

RELEASE: 8.7.1

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North Carolina State University
Name: Ian James Murray

Unofficial Transcript
Student ID: 200073043

Page 1 of 1
Birthdate: 1991-10-30

- - - - - Beginning of Graduate Record - - - - -

2014 Fall Term

Plan: Chemistry, Doctor of Philosophy
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
CH 610	Special Topics	2.000	2.000	S	0.000
CH 711	Adv Analyt Chem I	3.000	3.000	A-	11.001
CH 727	Mass Spectrometry	3.000	3.000	A	12.000
CH 801	Seminar	1.000	1.000	S	0.000
Term GPA: 3.834 Term Totals:		9.000	9.000	6.000	23.001

2015 Spring Term

Plan: Chemistry, Doctor of Philosophy
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
BIT 510	Core Technologies	4.000	4.000	A-	14.668
CH 895	DR Dissertat Res	5.000	5.000	S	0.000
ST 555	Stat Programming I	3.000	3.000	A-	11.001

Session: Eight Week - First

Course	Description	Attempted	Earned	Grade	Points
CH 795	Spec Topics Chem	3.000	3.000	A	12.000
Course Topic: Metabolomics and Fluxomics					
Term GPA: 3.767 Term Totals:		15.000	15.000	10.000	37.669

2015 Fall Term

Plan: Chemistry, Doctor of Philosophy
Plan: Minor in Biotechnology
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
CH 801	Seminar	1.000	1.000	S	0.000
CH 895	DR Dissertat Res	9.000	9.000	S	0.000

Session: Eight Week - First

Course	Description	Attempted	Earned	Grade	Points
BIT 566	Anim Cell Culture	2.000	2.000	A-	7.334
Term GPA: 3.667 Term Totals:		12.000	12.000	2.000	7.334

2016 Spring Term

Plan: Chemistry, Master of Science
Plan: Minor in Biotechnology
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
CH 695	MR Thesis Research	5.000	5.000	S	0.000
Term GPA: 0.000 Term Totals:		5.000	5.000	0.000	0.000

2016 Summer Term 1

Plan: Chemistry, Master of Science
Plan: Minor in Biotechnology
Session: Summer Ten Week Session

Course	Description	Attempted	Earned	Grade	Points
CH 696	Summer Thesis Res	1.000	0.000		0.000
Term GPA: 0.000 Term Totals:		1.000	0.000	0.000	0.000

Graduate Career Totals

Cum GPA: 3.778 Cum Totals: 42.000 41.000 18.000 68.004

- - - - - Non-Course Milestones - - - - -

Masters Final Comprehensive Examination

2016-06-02 Exam Taken - Pass Unconditional

Masters Thesis - Review

Investigation of using Paper Microfluidic Techniques as a means of
Improving Paper Spray Mass Spectrometry's Analytical Capabilities.

2016-06-02 Submitted Work - Completed

*****[End of Unofficial Transcript]*****

June 07, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am an Assistant Professor at University of Maryland School of Law writing to recommend Ian Murray for a clerkship in your chambers. I had the pleasure of having Ian in my Business Associations class in Fall 2020, where he received an "A" grade. I also had the opportunity to closely supervise his Note for the Maryland Law Review. Ian visited my office regularly and contributed unique perspectives to the class discussion. Ian is brilliant and writes like a dream. In my assessment, Ian is one of the top three candidates for clerkships from the University of Maryland this year.

Ian's intellectual talent and research abilities are best encapsulated in his law review Note, *Hughes V. Hu: Territorial Adjustments In Determining Caremark Liability For Foreign-Based Delaware Incorporated Companies*, which is slated for publication in the Maryland Law Review later this year. After situating case in the broader Delaware corporate law's Caremark jurisprudence, his Note calls for Delaware courts to factor in a business's underlying market practices when determining the acceptable level of oversight for companies. This approach is particularly noteworthy given the recent uptick in the number of foreign firms listing in American securities markets that can effectively "shop" for corporate law. His approach would not lower the requirements for boards under the "duty of oversight," but rather allow for the Delaware courts to better assess a company's "good faith" efforts in meeting the duty. The Note shows enormous creativity as well as a solid reading of doctrinal law. This is the type of student work—clear doctrinal analysis and realistic normative prescriptions—that would aid both scholars and lawyers.

Ian's writing is as outstanding as he talks. This applies to every topic from the simple analysis of a case to the conceptual deconstruction of orthodox legal theory underlying settled court precedent. His judgment is mature and tempered and reminds me of some of the best first year associates that I supervised while I was in private practice at a New York law firm. Ian's refined legal writing abilities is a testament both to his talent but also his incredible work ethic.

On a personal note, Ian is humble, smart, and intelligent. I have had numerous occasions to talk with him outside of class (through office hours, coffee, lunch in small cohorts), and always found him incredibly pleasant. Ian's talent is not just limited to law. Even during law school, he worked as a group exercise instructor in Golds Gym while volunteering at the Arlington Food Assistance center and the Habitat for Humanity. Prior to law school, he worked for three years as a scientific associate in Verto Solutions in Washington D.C. He is overall a superstar on so many dimensions.

I recommend Ian without any reservation. As a former law clerk to a federal judge, I know he is the kind of colleague that I would have wanted as an intellectual companion. Ian is as good a candidate as I can imagine for a position requiring intellectual talent and commitment.

If you would like additional information regarding Ian, please do not hesitate to contact me at 203.392.4466 (cell) or at wmoon@law.umaryland.edu.

Very truly yours,

William J. Moon
Assistant Professor of Law
University of Maryland School of Law

William Moon - wmoon@law.umaryland.edu - 4107067214



UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

Natalie Ram
Professor of Law
500 West Baltimore Street
Baltimore, MD 21201
410 706 5241
nram@law.umaryland.edu

June 8, 2021

Re: Recommendation for Ian Murray

Dear Judge:

I write enthusiastically to recommend Ian Murray for a clerkship in your chambers. Ian has been a standout student in two of my classes, including both a large traditional course and a small research seminar. He is smart, thorough, insightful, and a skillful writer. I am delighted to recommend him.

I first met Ian when he was a student in my Property course in Spring 2020. Property is a challenging first year course. It demands mastery of numerous terms of art, arcane rules, and diverging minority and majority policies across the country. Ian applied himself to these challenges with grit and enthusiasm. He was among my most frequent interlocutors in class. As important, Ian's contributions were always welcome, going beyond the assigned material to grapple with underlying principles and their flaws.

Ian's efforts in Property also met success. On the midterm exam, Ian scored in the top quarter of the class. With respect to the final exam and Ian's final grade in the course, the School of Law adopted Pass/Fail grading for the Spring 2020 semester due to the Covid-19 pandemic. Consistent with that decision, I cannot report to you what grade Ian would have received had the final exam been regularly graded. I can report, however, that Ian's exam demonstrated mastery of the course material. In one final exam essay, requiring students to trace title and settle a dispute between competing putative owners, Ian correctly identified why the first purchaser's chain of title would give way to a later comer's claim, due to a lack of recording, an intervening gift of title, and a "wild deed." Ian's response was complete, correct, and well crafted.

This spring, I was delighted to have Ian as my student in my seminar on Advanced Bioethics. Ian shined in the course, making it easy to award him an A for the semester. The course required students to prepare both short response papers to weekly discussion prompts and a longer research paper on an appropriate topic of the student's choosing. These varying forms of written work give me a unique perspective from which to comment on Ian's writing and research skills—and he was impressive at both. In his short responses, Ian demonstrated enviable precision of language. In a brief response on the topic of research use of human tissue, and whether informed consent is necessary or appropriate for such use, Ian addressed not only the ethical issue of whether consent is ethically appropriate, but also

suggested some efficient and administrable ways for obtaining that consent without unduly hindering research efforts. Ian argued that “broad consent”—the current legal standard for federally-funded research using identifiable human tissues—is “lacking . . . because of the dynamic nature of how biospecimens are used.” Instead, Ian suggested that a “dynamic consent model” would be more appropriate. In class, we probed what dynamic consent might look like, and Ian responded to his classmates’ questions with confidence and thoughtfulness.

Ian’s final paper for the course built masterfully on the concept of dynamic consent. In his paper, Ian tackled the difficult topic of whether informed consent is even possible when medical professionals or researchers make use of big data tools. Often, big data algorithms operate like “black boxes,” which may “provide predictions of future outcomes but not the *why* or *how* behind their conclusions.” From this observation, Ian “re-framed” two “core issues surrounding ‘black-box medicine’”—explainability in the clinical context and re-identification risks in the research context—to ones of informed consent. He then argued that dynamic consent is an appropriate method for approaching consent in both settings and described how such consent might be operationalized.

Ian’s paper was exceptional, deeply researched, eloquent, and innovative. Ian expertly unpacked his insight that explainability and re-identification are both problems of consent in lucid prose that was a pleasure to read. Although I have previously written about both big data algorithms and informed consent, I had not connected these topics the way Ian’s paper did. More than any other in the course, Ian’s paper taught me something new and reframed my thinking about these issues. It was a genuine joy to engage with Ian and his writing.

In sum, I recommend Ian to you without hesitation or reservation. Throughout our interactions during his law school career, I have enjoyed getting to know Ian, both as a student and as an individual. I have spoken with Ian about the satisfaction and intellectual rigor I found in my own clerkship experiences, first for Judge Calabresi of the Second Circuit and later for Justice Breyer at the Supreme Court. I am confident that Ian would be a stellar law clerk.

If you would like further information or have any questions, please do not hesitate to contact me. You can reach me by phone (410-706-5241) or email (nram@law.umaryland.edu).

Sincerely,



Natalie Ram

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is with pleasure that I write to you today on behalf of Mr. Ian J. Murray, who has applied to serve as a law clerk in your court beginning in the fall of 2022. This pleasure arises from the fact that I have been extremely impressed with his intelligence and work ethic, but also because he has focused, clear-headed plans for his professional career. The short of the matter is that Ian Murray has the ability, character, and focus to be an excellent clerk in your court and for that reason I urge your serious, and ultimately favorable, consideration of his application.

As a bit of background, I have been a law professor now for over twenty-five years, the last nineteen at the University of Maryland Carey School of Law. I also am the Director of the law school's business law program and thus am particularly well acquainted with the abilities of the students in that program. I have come to know Ian Murray not only because he is on the Business Law Track (as well as the Intellectual Property Law Track, no small feat), but also because of the remarkable circumstance that I already have had him as a student in three separate courses: three-credit Introduction to Contracts in the fall of 2019; two-credit Contracts II in the spring of last year; and Commercial Law: Secured Transactions last fall. I thus have a very solid foundation on which to offer an assessment of Mr. Murray's abilities and work ethic—and that assessment is extremely positive.

Ian is one of those highly focused students who actively engages in the learning process in class, and I remember his participation in all three of the courses very well. I also have had the pleasure of interacting with him through follow up discussions after class and of course through his participation in the business law program. Moreover, I structure all of my classes to involve a very high level of Socratic interaction, with the goal of modeling the work of lawyers in the practice of law. And to encourage the kind of collaboration essential to the successful practice of law, I require that the students form "law firms" for preparation and consultation.

From all of these perspectives, Ian Murray is an exemplary student. In both of the Contracts courses in his first year, he demonstrated not only that he had prepared for class, but also that he had taken the time to think through the deeper themes we were covering at the specific time. Although by no means over-eager or flashy, he also clearly was a leader of his law firm. Of equal importance, his participation reflected solid judgment. That is, he offered contributions only when he had something valuable to say. From all I have observed, the principal reason for this was (and is) that he has a level of maturity substantially above the typical law student. (You will note from his resume that before coming to law school he both completed a Master's degree in chemistry and worked as a science associate with a technology firm.) Moreover, as a reflection of his intellectual curiosity, he also commonly had follow-up questions (often quite insightful ones) after the formal class sessions.

On the final exam for Introduction to Contracts Ian received a "B+", but there is more here than may appear at first blush. First, we at Maryland Carey Law enforced a strict "B-" curve for large first-year courses. This means that Ian was among the better performers in the class (essentially in the top quarter). Moreover, I must admit that I give very demanding exams, ones that focus on the subtlety, uncertainty, and complexity of real-world factual problems. Ian's performance on the exam thus demonstrated that he has the talent and analytical skills to be an excellent law clerk (and ultimately practicing lawyer). (The Covid pandemic led, Maryland Law, like many other law schools, to adopt a credit/no credit system for the spring of last year; Ian of course earned a "credit" for Contracts II.)

Ian's talents came through even more clearly in my three-credit course, Commercial Law: Secured Transactions and Payment Systems, last fall. His class participation was especially impressive. As you certainly know, this subject matter is extremely challenging for law students, for it simply is foreign to them and does not connect with their prior life experiences. The relevant law (Article 9 of the Uniform Commercial Code) also is very complex, with cross-referencing rules and unfamiliar terminology ("purchase money security interest," "perfection," etc.).

Moreover, the book we use for the course is based on the "problem method," which emphasizes how the law functions in actual transactions. This method requires the students not merely to learn the rules of law as an abstract matter, but also (and more important) to be able to apply them in real-world situations. Ian thrived in this difficult environment, for he always was prepared for

Michael Van Alstine - mvanalstine@law.umaryland.edu - (410) 706-1055

class and demonstrated that he had carefully analyzed the problems in advance. Indeed, I remember well his insightful contributions in class, especially on the more difficult subject matters.

His performance on the final exam also was impressive. From the difficult subject matter, most students approach the exam in Secured Transactions with trepidation. My exams in this course also model the problem method, for I give the students complicated fact patterns and require them to analyze how the complex rules in Article 9 of the UCC apply to “real-world” commercial transactions. The exam thus rewards both diligence in preparation but also analytical ability. Notwithstanding all of these challenges, Ian’s performance was excellent: He earned an “A-” on the final exam with one of the better raw scores in a class of over 60 students. Based on over twenty years of using this exam format in Secured Transactions, Ian’s impressive performance thus amply demonstrates to me that he has the intelligence, but equally important the work ethic and analytical ability, to be an excellent clerk in your court.

I will add a last note on Ian as a person. As noted above, I have had numerous opportunities to interact with him over the last two years, both in and outside of the classroom setting. From all of this, I have come to the clear opinion that he will be an excellent work colleague, someone who will complete his own assigned tasks in a timely and professional manner, but also will provide willing, valuable, and cheerful support to his colleagues.

For all of these reasons, I strongly urge you to hire Ian Murray as your law clerk for the fall of 2022. You of course will receive many applications from talented law students; but you simply cannot go wrong by choosing Ian. I thus urge your serious, favorable consideration of his application.

Should you have any questions about this recommendation, or if you otherwise believe that I could be of further assistance in your consideration of Mr. Murray’s application, I would be happy to assist in any way that I can. You can contact me by telephone at (410) 706-1055 or email at mvanalstine@law.umaryland.edu.

Very truly yours,

Michael P. Van Alstine
Francis King Carey Professor in Business Law

Michael Van Alstine - mvanalstine@law.umaryland.edu - (410) 706-1055

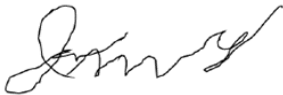
Ian James Murray

(304) 203-5523 | 2311 25th St. S #204, Arlington, VA 22206 | imurray@umaryland.edu

June 14, 2021

I originally drafted the attached writing sample as an appellate brief for my Oral Advocacy course, but have continued to refine the piece. It incorporates suggestions from my writing professor but is unedited by any other third party. This brief is in opposition to an appeal by the appellant (Mr. Scott) regarding an action under 42 U.S.C. § 1983. I have omitted the cover page, table of authorities, jurisdiction statement, and certificate of service.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ian Murray', with a stylized, cursive script.

Ian Murray

STATEMENT OF ISSUES

1. Did the district court properly find that Officer Schrute participated in a merely personal dispute and that the use of his police-issued handcuffs was not enough to transform the event into an exercise of state authority?
2. Did the district court properly find that, even if Officer Schrute were a state actor, the amount of force used was not excessive given the totality of the circumstances?

STATEMENT OF THE CASE

FACTUAL BACKGROUND

Defendant/Appellee, Officer Dwight Schrute, is a police officer for the Baltimore Police Department (BPD). J.A. 14. On October 1, 2019, Officer Schrute attended a Ravens/Steelers football game at M&T Bank Stadium. *Id.* at 15. Accompanying Officer Schrute was his brother-in-law, Andy Bernard (Mr. Bernard), and his eight-year-old son, Jimmy. *Id.* During this game, the Ravens hosted a Police Officers Appreciation Day celebration; Officer Schrute was invited to participate in the celebrations, which included an on-field ceremony. *Id.* The on-field time also counted towards Officer Schrute's required community-building hours. *Id.* The Ravens provided complimentary seats for law enforcement officers participating in the ceremonies; however, Mr. Bernard purchased better seats for himself, Jimmy, and Officer Schrute to enjoy. *Id.* at 15. Mr. Bernard's seats were located on the stadium's second level, away from the designated police seating area. *Id.* at 15, 19.

In order to participate in the on-field celebration, Officer Schrute had to wear his police uniform. *Id.* at 16. Therefore, while in the stands, Officer Schrute wore his police uniform pants, shirt, and badge; Officer Schrute also wore a large Ravens jersey—which Jimmy got him for

Father's Day—over his shirt and badge. *Id.* at 16-17. Officer Schrute left his duty belt—containing his nightstick, mace, flashlight, and handcuffs—in a bag while in the stands. *Id.*

During the game, Officer Schrute's family sat directly behind Plaintiff/Appellant Michael Scott. *Id.* at 17. Throughout the game, Mr. Scott would stand, thereby obstructing Jimmy's view. *Id.* Officer Schrute and Mr. Bernard repeatedly asked Mr. Scott to stay seated but to no lasting avail. *Id.* In addition to repeatedly blocking Jimmy's view, Mr. Scott was also shouting, swearing, and waving his towel around—nearly hitting the Schrute family—on several occasions. *Id.*

At half time, Officer Schrute headed to the field for the ceremony honoring police officers. Officer Schrute removed his jersey, donned his duty belt, and politely asked Mr. Scott to remain seated during the ceremony so Jimmy could see him on the field. *Id.* at 16-17. Again, Mr. Scott refused this request. *Id.* at 17.

When Officer Schrute returned from his on-field community service, he was disappointed to learn that Mr. Scott stood during the entire ceremony and continuously blocked Jimmy's ability to see his dad on the field. *Id.* In an attempt to comfort Jimmy, Officer Schrute handed Jimmy his handcuffs to entertain himself. *Id.* Officer Schrute put his Ravens jersey back on over his uniform and returned his other equipment to his police bag. *Id.*

Mr. Scott's behavior only worsened in the second half; with every seemingly positive Steelers action, Mr. Scott became more obnoxious. *Id.* at 17-18. Mr. Scott, who was becoming more intoxicated, proceeded to stand, honk his horn, and throw streamers everywhere. *Id.*

Mr. Bernard argued with Mr. Scott over his overzealous and distracting celebrations; Mr. Bernard told Mr. Scott that "[Schrute] was going to make Mr. Scott sit down since [Schrute] is the police." *Id.* at 18 (information added for clarity). In response to this assertion, Officer Schrute promptly stated he was "off-duty" and "just trying to enjoy the game." *Id.* Mr. Bernard, visibly

upset by Mr. Scott's continuous disregard for the fellow fans, tapped Mr. Scott on the head with his foam hand. *Id.* at 18, 21.

Pam Beesly, a stadium security attendant, saw this and came to investigate this physical altercation. *Id.* at 18, 23. Beesly asked if everything was ok, to which Officer Schrute responded that "everything was under control" and it was "just two fans having a difference of opinion." *Id.* at 18, 24. Mr. Scott said nothing to Beesly. *Id.* at 11, 18. Beesly left the scene, satisfied with Officer Schrute's response. *Id.* at 19.

Beesly's investigation briefly calmed the tension between the two parties. However, the adversarial posturing between Mr. Bernard and Mr. Scott escalated when some of Mr. Scott's streamers fell into Mr. Bernard's drink. *Id.* Mr. Bernard told Mr. Scott that he needed to "fix" his beer. *Id.* This incident prompted Mr. Scott to respond that he would "fix" Mr. Bernard if Mr. Bernard did not leave him alone. *Id.* This statement sounded like a threat to Officer Schrute. *Id.* Mr. Bernard, not appreciating this retort, again tapped Mr. Scott with his foam finger. *Id.*

This innocuous act provoked Mr. Scott to abruptly reach into his pocket to retrieve something. *Id.* This sudden movement caused a quick chain of events. Mr. Bernard screamed, "He's got a knife!" Schrute, concerned for the welfare of his family, observed that Mr. Scott had something in his hand, grabbed his handcuffs from Jimmy, and wrapped them around Mr. Scott's legs. *Id.* Officer Schrute pulled the handcuffs in an attempt to stop Mr. Scott from using the potentially dangerous item in his hand; this caused Mr. Scott to fall off his seat and tumble over the railing. *Id.* Unfortunately, Mr. Scott's landing caused severe injuries. *Id.* at 12.

PROCEDURAL BACKGROUND

Mr. Scott filed a complaint against Officer Schrute in the United States District Court for the District of Maryland on December 1, 2019, alleging a cause of action under 42 U.S.C. § 1983.

J.A. 1, 3. Specifically, Mr. Scott alleged that Officer Schrute, acting under color of state law, violated his constitutional rights by using excessive force when Officer Schrute seized him.

In response, Officer Schrute filed his answer on December 15, 2019, denying that he violated Scott's rights; Officer Schrute subsequently filed a motion for summary judgment. *Id.* at 6, 30. On February 21, 2020, the court granted Officer Schrute's motion for summary judgment. *Id.* at 30, 32. The court held that the disagreement between Officer Schrute and Mr. Scott was a "private argument during a sporting event" and that the use of police-issued handcuffs "fails to transform the incident" into one where Officer Schrute could be considered to be acting under color of state law. *Id.* at 31. Furthermore, the court held that even if Officer Schrute were a state actor, Officer Schrute's actions were reasonable given the circumstances. *Id.* at 31-32. Mr. Scott appealed. *Id.* at 32.

SUMMARY OF THE ARGUMENT

In order to succeed on a claim under 42 U.S.C. § 1983, two elements must be met: (1) that the defendant acted under color of state law, and (2) that the defendant deprived the plaintiff of a constitutional right. *Martinez v. Colon*, 54 F.3d 980, 984 (1st Cir. 1995). Accordingly, this Court should affirm the district court's decision to grant Officer Schrute's motion for summary judgment because the appellant, Mr. Scott, cannot prove either of the essential elements.

The dispute between Officer Schrute and Mr. Scott was purely personal; as such, Officer Schrute did not act under color of state law when he incapacitated Mr. Scott. Courts look for a nexus between the officer's conduct and the state itself in determining if an officer acted under color of state law. *Rossignol v. Voorhar*, 316 F.3d 516, 523 (4th Cir. 2003). Officers act under color of state law when their actions are taken either in their official capacity or in relation to their official duties; however, conduct arising from purely personal motivation cannot be held to occur